United Nations A/HRC/39/56

General Assembly

Distr.: General
29 June 2018

Original: English

Human Rights Council
Thirty-ninth session
10–28 September 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the Right to Development on its nineteenth session (Geneva, 23 to 26 April 2018)

Chair-Rapporteur: Zamir Akram

GE.18-10740(E)

1810740

Please recycle

Contents

		Page
I.	Introduction	3
II.	Organization of the session	3
III.	Summary of proceedings	4
	A. General statements	4
	B. Interactive dialogue with the Special Rapporteur on the right to development	9
	C. Interactive dialogue with experts	9
	D. Contributions by States and other stakeholders	12
	E. Draft right to development criteria and corresponding operational subcriteria	15
	F. Standards for the implementation of the right to development	15
IV.	Conclusions and recommendations	16
	A. Conclusions	16
	B. Recommendations	17
Annex		
	List of participants	19

I. Introduction

1. The present report was prepared pursuant to Human Rights Council resolution 9/3 in which the Council decided to renew the mandate of the Working Group until it had completed the tasks entrusted to it and that the Working Group would convene annual sessions of five working days and submit its reports to the Council.

2. The mandate of the Working Group on the Right to Development, as established by the Commission on Human Rights in its resolution 1998/72, is to monitor and review progress made in the promotion and implementation of the right to development as set out in the Declaration on the Right to Development (General Assembly resolution 41/128), at the national and international levels, providing recommendations thereon and further analysing obstacles to its full enjoyment, focusing each year on specific commitments in the Declaration; to review reports and any other information submitted by States, United Nations agencies, other relevant international organizations and non-governmental organizations on the relationship between their activities and the right to development; and to present for the consideration of the Commission a sessional report on its deliberations, including advice to the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the implementation of the right to development and suggesting possible programmes of technical assistance at the request of interested countries with the aim of promoting the implementation of the right to development.

II. Organization of the session

3. The Working Group convened its nineteenth session in Geneva from 23 to 26 April 2018. The session was opened by the United Nations Deputy High Commissioner for Human Rights. In her opening statement,[1] the Deputy High Commissioner emphasized the indivisibility and universality of all human rights and the way in which the right to development could make a unique and essential contribution in addressing global challenges. Inequality and discrimination were the defining challenges of our time. She referred to the devastating impact of illicit financial flows; poor patterns of public expenditure; and public services undermined by political interests. Different results would come only from a different approach, in which development and globalization benefits were shared fairly so as to leave no one behind either by design or neglect. She called upon the Working Group to reflect upon its mandate, achievements and challenges and to consider new avenues for achieving progress in the implementation of the right to development.

4. At its first meeting, on 23 April 2018, the Working Group re-elected by acclamation Zamir Akram as Chair-Rapporteur. In his opening statement,[2] the Chair-Rapporteur referred to several instruments that the international community had adopted by consensus and called upon Member States to use these consensus texts as a basis for moving forward in the implementation of the right to development. He had consistently argued that progress in the Working Group was possible only if participating Member States demonstrated the necessary political will for compromise and by seeking common ground. The 2030 Agenda for Sustainable Development (General Assembly resolution 70/1) further enhanced the possibilities for realizing the right to development, since the Sustainable Development Goals contained therein are broadly consistent with that right. The Chair-Rapporteur referred to a paper that he had submitted to the Working Group highlighting common elements in key texts.[3]

5. The Chair invited Vitali Rousak, Chief, Central Planning and Coordination Service, Division of Conference Management, United Nations Office at Geneva, who drew the

[1] The full text of the statement is available from www.ohchr.org/EN/Issues/Development/Pages/19thSession.aspx.

[2] The full text of the statement is available from www.ohchr.org/EN/Issues/Development/Pages/19thSession.aspx.

[3] A/HRC/WG.2/19/CRP.1.

attention of the Working Group to General Assembly resolution 72/19 on the pattern of conferences, with regard to the utilization of conference-servicing resources. The purpose was to raise awareness that the utilization rate of the Working Group had fallen below the 80 per cent benchmark and to encourage all the session participants to use the allocated time and resources judiciously, taking into consideration the constraints on the limited conference-servicing capacity of the United Nations Office at Geneva.

6. The Working Group subsequently adopted its agenda (A/HRC/WG.2/18/1) and programme of work (A/HRC/WG.2/19/INF.1) with a minor amendment to the text under agenda item 4 (e) proposed by the European Union and supported by Japan (A/HRC/WG.2/19/INF.1/Rev.1). Egypt had initially agreed with the amendment but later noted that the original text had been in accordance with Human Rights Council resolution 36/9 on the right to development.

7. During the session, the Working Group considered contributions by States and other stakeholders to the implementation of the right to development, comments and views from relevant stakeholders on the draft right to development criteria and corresponding operational subcriteria and standards for the implementation of the right to development (A/HRC/WG.2/17/2 and A/HRC/WG.2/18/G.1). The Working Group also engaged in an interactive dialogue with the Special Rapporteur on the right to development and with experts on the implementation and realization of the right to development.

III. Summary of proceedings

A. General statements

8. Speaking on behalf of the Movement of Non-Aligned Countries, the representative of the Bolivarian Republic of Venezuela reaffirmed the commitments made at the seventeenth Summit Conference of Heads of State of Government of Non-Aligned Countries. The Non-Aligned Movement firmly believed that the realization of the right to development was a necessity and that the international community must demonstrate its commitment and give the right to development the high profile that it merited. The right to development should be central to the implementation of the 2030 Agenda. International cooperation was integral to the implementation and realization of the right to development and could help overcome the lasting global challenges. The Non-Aligned Movement hoped that the Working Group would be able to advance the development of a complete and unique set of standards for the implementation of the right to development.

9. The European Union remained strongly committed to achieving sustainable development and eradicating poverty, promoting human rights, working towards ensuring security, conflict prevention and resolution and encouraging good governance, gender equality, human development, accountability and equitable globalization. Divergent views in the understanding of the right to development remained. It reiterated its support for the right to development, as based on the indivisibility and interdependence of all human rights, the multidimensional nature of development strategies and individuals as the central subjects of the development process. The European Union reaffirmed its position that it was not in favour of the elaboration of an international standard of a binding nature. It was willing to continue the consideration of the right to development criteria and subcriteria through a consensual approach.

10. The delegate of Pakistan, speaking on behalf of the Organization of Islamic Cooperation (OIC), stated that, after two decades in the Working Group of streamlining elements, criteria and guidelines, it was time to move from discussion to practical action. OIC urged the Working Group to start drawing up an internationally legally binding instrument for the right to development without further delay. It called for flexibility and compromise, in order to move beyond the entrenched positions that had derailed the process to date.

11. Speaking on behalf of the African Group and expressing agreement with the Non-Aligned Movement, the delegate of Togo expressed a wish to see the finalization of the

criteria and subcriteria in relation to the elaboration of a comprehensive and coherent set of standards for the implementation of the right to development and sound follow-up mechanisms. The participation and voice of the most vulnerable was crucial. The delegate called upon developed countries to ensure fair financing for development and reform of the current free trade and development finance system, as they hampered sustainable development.

12. The representative of Brazil stated that the right to development was interrelated with the realization of all human rights. While recognizing the different legal standing of human rights norms and the 2030 Agenda, there was no doubt that they were complementary and mutually reinforcing. Engaging with consideration of the criteria and subcriteria in relation to the elaboration of a comprehensive and coherent set of standards for the implementation of the right to development had enhanced and deepened the country's understanding of the right to development. It was time to move forward to address emerging priority issues, in the context of the 2030 Agenda.

13. The delegate of the Islamic Republic of Iran noted that, for many years, the developing countries had fought for the welfare and prosperity of their nations and were therefore concerned about economic, social and cultural rights and the right to development. Development was a right and the Islamic Republic of Iran refuted any approach trying to undermine that right or associating it to charity, privilege or generosity. While the discussions on the right to development had been adversely affected by political and conceptual differences, globalization and economic crises had highlighted that the right to development was relevant to all countries, regardless of their level of development. We should overcome the political impasse and move from rhetoric to action.

14. The representative of the Plurinational State of Bolivia expressed agreement with the Non-Aligned Movement and reiterated the importance of the right to development with respect to cultural diversity and social contexts. The representative also reiterated the fundamental sovereign equality of States in international law. The current international financial system promoted inequality, poverty and marginalization, and measures were required at the international level to ensure the full exercise and realization of the right to development. A binding instrument was vital to fill that legal gap.

15. The delegate of Cuba expressed agreement with the Non-Aligned Movement. Obstacles to the implementation of the right to development increasingly prevented people from enjoying development and their human rights. The right to development also contained the extraterritoriality dimension. The question now was about operationalizing that right rather than discussing whether it was a human right. Cuba encouraged national human rights institutions to operationalize the right to development at a national level and remained willing to engage constructively with all other stakeholders.

16. The delegate of Nigeria, expressing agreement with the African Group, the Non-Aligned Movement and OIC, reiterated the position of Nigeria that the right to development deserved adequate international attention and was key to achieving the 2030 Agenda. The lack of development opportunities was negatively affecting the well-being of the citizens of developing countries and contributing to instability and conflicts, which posed serious threats to global peace and security. Nigeria urged all stakeholders to shelve the seeming differences and be committed to the international efforts aimed at the realization of the right to development.

17. The representative of China said that development was an inalienable human right and that all countries were free to choose their own development agendas, that catered to their own realities. To achieve robust, sustainable, inclusive development, China called upon all States to comply with the Charter of the United Nations, respect different political, social systems and development progress in different countries, strengthen dialogue and cooperation, fully incorporate sustainable development and construct international relations that were fair, just and mutually respectful.

18. The delegate of Sri Lanka noted that the country was yet to operationalize that mandate owing to the absence of a comprehensive and coherent set of standards for assessing development. Regional and international efforts were needed to complement national efforts. Through its "Vision 2025: a country enriched" policy document, Sri Lanka

had now launched a comprehensive framework to alleviate poverty. The delegate reiterated the call for the finalization of the set of standards as a matter of urgency and emphasized the importance of finalizing the criteria and subcriteria, which had been under negotiation since 2010.

19. The representative of Pakistan expressed agreement with the Non-Aligned Movement and OIC. The Declaration on the Right to Development broadly defined various aspects of the right to development, while discussions around the criteria and subcriteria and set of standards were fruitful for shortlisting different categories, elements and guidelines for operationalization of the right to development. The right to development provided a bridge between development and human rights. Pakistan supported the theme of the 2018 high-level political forum on sustainable development, "transformation towards sustainable and resilient societies", which could help in the promotion and protection of all human rights.

20. The representative of Egypt, expressing agreement with the African Group and the Non-Aligned Movement, noted that the right to development required international cooperation within a framework of equitable economic relations, exchange of best practices and transfer of technology, while respecting the principle of common but differentiated responsibilities. Egypt was looking forward to concluding the discussion on the set of standards and criteria. Any further delay in the adoption of the standards should act as a trigger to the Human Rights Council to decide upon the best way of drawing up a legally binding instrument.

21. The delegate of South Africa stated that the promise of the right to development had remained unfulfilled and undermined by philosophical debates, with regression on key commitments. It was an equal right, and article 22 of the African Charter on Human and Peoples' Rights was testimony to the continent's commitment towards the practical realization of the right to development. The delegate referred to the stagnation with regard to progress on the right to development in the Working Group, owing to ideological differences, while poverty and obstacles towards development remained deep-rooted. The delegate also spoke of the need for the involvement of United Nations system organizations, to mainstream the right to development, and of the High Commissioner, to identify and implement concrete and stand-alone projects.

22. The representative of the Bolivarian Republic of Venezuela expressed regret that some developed countries had blocked such work over the years and noted that unilateral sanctions undermined the progress in the work on development and that capitalism exacerbated inequalities. The representative stressed the need for a legally binding document, reaffirming the provisions of the Declaration on the right to development, and expressed support for the adoption of guidelines on the operationalization of the right to development.

23. The delegate of Ethiopia expressed agreement with the African Group and the Non-Aligned Movement and believed that development was a question of survival as a human being and a fundamental human right. The international community had an obligation to work and cooperate for the realization thereof. Growing alone was costlier than growing together, and the Government was striving and working towards the realization of development with its neighbours for mutual benefit and the creation of a peaceful world, through poverty reduction and the creation of additional jobs.

24. The representative of Nepal stated that the value that the right to development bore for a least developed country could hardly be overemphasized. The right to development could constitute real connecting threads that led to the realization of all human rights and that called for its mainstreaming. Nepal hoped for the finalization of the consideration of criteria and subcriteria and noted that, without the creation of a just and predictable environment underpinned by a suitable international legal framework, the dream of realizing the right to development would largely remain unfulfilled.

25. The delegate of Qatar expressed agreement with the Non-Aligned Movement. Qatar noted with regret that the use of unilateral cohesive measures created obstacles for the promotion of the right to development and blocked its implementation, also affecting global cooperation for sustainable development. It encouraged States to overcome those obstacles

by avoiding such policies and expressed its support for the efforts of the Working Group on the adoption of criteria and operational subcriteria.

26. The delegate of Mozambique expressed agreement with the African Group and the Non-Aligned Movement and noted that, even though the right to development did not enjoy consensus, Mozambique appealed to all Member States to continue to lend support to the mandates of both that Group and the Special Rapporteur. The principles of leaving no one behind, universality and inclusiveness reinforced the right to development and the role that it could play in realizing the Sustainable Development Goals. Mozambique encouraged the efforts undertaken to ensure a possible engagement of the Working Group with the high-level political forum on sustainable development, given the intrinsic connections between the processes.

27. The representative of the Holy See noted that development must not be understood solely in economic terms, but in a way that was integrally human. The Holy See hoped that the solemn commitments made in 2015 would serve as a catalyst for the proper implementation of clear principles for the promotion of the common good and the improvement of all sectors of life. Humanity was faced with crucial challenges, and the challenges of true commitment and real implementation were even greater.

28. The delegate of Malaysia expressed agreement with the Non-Aligned Movement and OIC. The delegate stated that the empowerment of women and girls was the key component in the development agenda. The delegate listed a number of obstacles to development, including violence, conflict, climate change and natural disasters, and underlined economic obstacles. Malaysia emphasized the need for international cooperation to overcome such obstacles and called on States to use all means to implement the right to development.

29. The representative of Algeria expressed its full support for the Working Group and its work. The representative noted that the right to development was both an individual and a collective right and highlighted the need to create an enabling environment to give individuals and society the ability to develop. The representative expressed regret that certain political interests had hindered the work of the Working Group and stressed the need to give a fresh momentum to the implementation of the right to development.

30. The representative of Botswana expressed agreement with the African Group and the Non-Aligned Movement and stated that the present challenges impeding the right to development would affect the enjoyment of certain human rights and fundamental freedoms. The hardest-hit in terms of uneven progress in global efforts towards realizing the vision of the Declaration were, in particular, people in Africa, the least developed countries, landlocked developing countries and small island developing States. The entire United Nations system should spare no effort in mainstreaming the right to development. The representative reiterated the commitment of Botswana to the finalization of the consideration of the draft criteria and subcriteria.

31. The delegate of Kuwait expressed agreement with the Non-Aligned Movement and OIC. Kuwait hoped that efforts in the Working Group and by the Special Rapporteur would lead to addressing the challenges faced in the implementation of the right to development. The delegate stressed the need to concentrate on the humanitarian issues and spoke of the establishment of the Kuwait Fund for Arab Economic Development for the provision of humanitarian aid to developing countries. The delegate expressed hope that the States would be able to reach understanding on the criteria and operational subcriteria in the present session.

32. The delegate of Ecuador expressed agreement with the Non-Aligned Movement and noted that, more than 30 years after the adoption of the Declaration on the Right to Development, there was a need to move forward. Ecuador supported the work on the document containing criteria and operational subcriteria and hoped to finalize the document in the present session. The delegate noted the need to take into the account the results of the previous high-level political forum and the set of existing international instruments, including Human Rights Council resolution 37/25 on the right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities.

33. The representative of Indonesia, expressing agreement with the Non-Aligned Movement and OIC, noted that discussion of a set of standards, criteria and operational subcriteria had continued for some time without concrete results. There should be a political commitment and willingness from all Member States towards the realization of that very important right. International cooperation and global partnership should be recognized by all States as essential elements. Indonesia had made efforts towards realizing the right to development at the national, regional and global levels.

34. The delegate of Azerbaijan expressed agreement with the Non-Aligned Movement and the Organization of Islamic Cooperation and spoke of the need for more publicity and visibility with regard to that event and ongoing discussions on the right to development. The exchange of different views would yield concrete results to better promote international cooperation for the realization of the right to development. Azerbaijan expressed hope that the present effort would yield concrete results. The delegate stressed that the 2030 Agenda was the central part of the development agenda at all levels and highlighted that, with mass-scale migration and people on the move, there was a need to strengthen international solidarity and cooperation for the realization of the right to development.

35. The delegate of the Philippines expressed agreement with the Non-Aligned Movement. The Philippines appreciated the progress made in the formulation of the criteria and operational subcriteria and hoped that collaborative engagement during the present session would finalize that exercise. Given that the right to development was an inalienable human right, and reflected in recent major multilateral agreements, it joined other delegations in calling for the start of the elaboration of a legally binding instrument on the right to development.

36. The representative of Syria expressed agreement with the Non-Aligned Movement and noted that, 30 years after the adoption of the Declaration on the Right to Development, there were still a number of obstacles to the realization of that right. The representative stated that developed countries also adopted policies creating such obstacles, such as unilateral coercive measures or the use of terrorism to destabilize other countries. The representative reiterated the importance of the link between different human rights and the importance of international cooperation and the realization of the 2030 Agenda.

37. The representative of the South Centre noted that the right to development was the key element of the work of the Centre and affirmed the importance of the Declaration. The representative recalled the meeting of the Non-Aligned Movement in Baku, at which it was declared that implementing the right to development required a profound change in the international economic structure, including the creation of economic and social conditions that were favourable to developing countries. The representative stressed the need to eradicate poverty, as a critical element for the promotion of the right to development and achieving the Sustainable Development Goals.

38. The representative of Associazione Comunità Papa Giovanni XXIII, speaking on behalf of the Geneva-based Forum of Catholic-inspired Non-governmental Organizations, stated that human rights would be better fulfilled if States had the political will and a genuine commitment to the implementation of the right to development and to conceive of it in a holistic, critical and multidimensional way. Effective international cooperation and solidarity among States were necessary to achieve a global framework on the right to development. The Forum hoped that, in the present session, States would conduct the discussion on the criteria and operational subcriteria with a more constructive attitude, in order to conclude the process. As the working document on the criteria and operational subcriteria had progressively become unmanageable, the Forum had produced a table to show similarities and repetitions, in order to speed up the discussion.

39. The representative of the Indian Council of South America expressed concern over the implementation gap between the principles enshrined in the Declaration on the Right to Development and the poor protection of the rights of peoples under colonial domination and occupation. Article 5 of the Declaration on the Right to Development gave a clear indication that the right to self-determination must be included in the elaboration of a draft international instrument.

B. Interactive dialogue with the Special Rapporteur on the right to development

40. The Special Rapporteur on the right to development, Saad Alfarargi, addressed the Working Group at its second meeting. He provided an overview of his mandate and the work undertaken. The right to development and all other human rights were an integral part of sustainable development. While economic growth was important, development had a qualitative aspect, and including the human rights dimension was crucial. The Declaration on the Right to Development must be the guiding force for the implementation of the 2030 Agenda for Sustainable Development. He reported on the regional consultations on the implementation of the right to development, as mandated by the Human Rights Council in resolution 36/9. The focus of the consultations was on identifying and promoting good practices in the implementation of the right to development, including with regard to the design, implementation, monitoring and evaluation of policies and programmes devised to advance human development. One overarching theme that emerged was the importance of the effective participation and inclusion of all relevant stakeholders in the development process. The ultimate goal was to formulate general guidelines for implementing policies and programmes to realize the right to development. He also provided information on his upcoming visit to Cabo Verde and his forthcoming reports on the right to development and inequality and South-South cooperation. He hoped that his partnership with the Working Group would be a good example of synergies in the work of special procedures and other mechanisms.

41. The representative of the Bolivarian Republic of Venezuela, speaking on behalf of the Non-Aligned Movement, the European Union and representatives of the Islamic Republic of Iran, Egypt, South Africa, Tunisia and Ecuador, took the floor, followed by the Associazione Comunità Papa Giovanni XXIII, speaking on behalf of the Forum of Catholic-inspired Non-governmental Organizations, and the Indian Council of South America. Several speakers welcomed the approach of the Special Rapporteur to his work, highlighting his cooperation with other special procedures mandate holders of the Council, United Nations agencies and other mechanisms involved in issues related to the right to development. The mandate would provide a valuable opportunity to continue to advance in overcoming the obstacles that had impeded the effective realization of the right to development. The European Union took note of the Special Rapporteur's report and stressed its concern regarding duplication of work between the mandate of the Special Rapporteur and the Working Group. Some delegates acknowledged the importance of maintaining a fluid dialogue with the Special Rapporteur, in particular with regard to the development of a single and complete set of standards for the implementation of the right to development. International cooperation and partnership could contribute to ensuring sustainable and inclusive development and help forge a rule-based global order. Representatives emphasized the need to remove obstacles hindering the right to development, in particular, politicization.

42. The Special Rapporteur welcomed all the contributions and reiterated that wide support for his work would encourage broader participation in the work of and engagement with the mandate holder. Coordination among special procedures mandate holders was important. He referred to the regional consultation that had taken place, explained how the meetings were planned and said that he was open to comments on the work to date.

C. Interactive dialogue with experts

43. In accordance with paragraph 14 of Council resolution 36/9, the Working Group held an interactive dialogue with experts on the implementation and realization of the right to development and the implications of the 2030 Agenda, including the possible engagement of the Working Group with the high-level political forum on sustainable

development.[4] The first panel included Olivier De Schutter, a member of the Committee on Economic, Social and Cultural Rights; Bhumika Muchhala, Independent Consultant on Finance and Sustainable Development, Lucy Claridge, legal expert, and Vicente Yu, Deputy Executive Director of the South Centre and Coordinator of the Global Governance for Development Programme.

44. Mr. De Schutter presented a study on the international dimensions of the right to development. The right to development should not be self-contained and should extend influence outside the United Nations system. International obligations had two categories: (a) extraterritorial obligations in the field of human rights, including "negative" and "positive" duties, in which context he referred, inter alia, to general comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, adopted by the Committee on Economic, Social and Cultural rights in 2017; and (b) global obligations, a characteristic of which was the duty of States to take into consideration their human rights obligations, in good faith, in the search for multilateral solutions to global problems. Key areas essential to the advancement of development were: restructuring and alleviation of foreign debt, elimination of illicit financial flows, official development assistance, trade and investment reform, the regulation of transnational corporations, intellectual property rights and the transfer of technology and international support for the establishment of universal social protection floors. The report provides forward-looking recommendations.

45. Ms. Muchhala presented a study on the right to development and illicit financial flows. The premise of connecting illicit financial flows to the right to development was that the right made the prevention, regulation, and eventual elimination, of illicit financial flows a human rights imperative. Currently, three frameworks, namely, the Declaration on the Right to Development, the 2030 Agenda and the Sustainable Development Goals and the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, were central to taking meaningful action on illicit financial flows. She explained the concepts of transfer mispricing, tax havens and offshore wealth and pointed out that illicit financial flows were, in different ways, a significant constraint to domestic resource mobilization for the Sustainable Development Goals and financing for development. Global tax cooperation among States within international organizations was therefore crucial.

46. Ms. Claridge informed the Working Group on jurisprudential developments of the right to development at the African Court for Human and Peoples' Rights in the Ogiek case. The Court reaffirmed earlier jurisprudence of the African Commission and Human and Peoples' Rights to the effect that indigenous peoples were entitled to the right to development under article 22 of the African Charter on Human and Peoples' Rights. The Court recognized that participation was an essential element of the right to development. It also endorsed the principles developed in relevant case law. Drawing on article 23 of the Declaration on the Rights of Indigenous Peoples, the Court declared that the State was responsible for creating conditions favourable to peoples' development. The ruling confirms that there was a clear positive duty on the State to ensure that people were not left out of the development process or benefits.

47. Mr. Yu spoke on challenges for the implementation of the right to development and the 2030 Agenda. The major challenges were that the global economy remains uncertain and was not stable. Yet the international community, including both the developed and developing countries, was not prepared for a new economic crisis or economic slowdown. Climate change could also constrain development and the right to development, and therefore the implementation of the Paris Agreement had to be scaled up. These constraints could be examined to create an effective contextualized national strategy. Given an uneven playing field, the principles of special and preferential treatment and common but differentiated responsibility should be reflected in climate change action so that developing

[4] Transcripts of the experts' presentations are available from www.ohchr.org/EN/Issues/Development/Pages/19thSession.aspx.

countries could design proper national policies. Policy areas required systematic reforms, with strong international partnerships.

48. In the ensuing discussion, the representatives of the Bolivarian Republic of Venezuela, speaking on behalf of the Non-Aligned Movement, Kenya, the Islamic Republic of Iran, South Africa, Brazil, the European Union, Ecuador, the Plurinational State of Bolivia and the Bolivarian Republic of Venezuela took the floor, followed by the Associazione Comunità Papa Giovanni XXIII, speaking on behalf of the Forum of Catholic-inspired Non-governmental Organizations, and the Indian Council of South America. The representatives reiterated that South-South cooperation was an important element of international cooperation for sustainable development as a complement to North-South cooperation. The delegate of Kenya had a specific question on the ruling in the Ogiek case and explained that a task force to implement the ruling had been set up. He also asked whether there were examples of similar cases regarding the rights of indigenous peoples and violations of the right to development in other jurisdictions. Delegates noted that the 2030 Agenda and Goal 17 thereof clearly echoed the Declaration on the Right to Development. The means of implementation were fundamental for the success of countries in meeting their development needs and achieving the Sustainable Development Goals and that all means of implementation deserved equal attention. The representative of the European Union stated that the 2030 Agenda put the imperative of equality and non-discrimination at the heart of its concerns. Some delegates highlighted the need to continue to work to formulate policies for development more specifically and to take into account the activities around those policies and strategies, including investment challenges, the lack of independent mechanisms for solving disputes, external debt, climate change and other challenges. Delegates spoke of the relationship between the Paris Agreement and the right to development and how that connection had to be properly established within the framework of the right to development in terms of equity and common but differentiated responsibilities.

49. In concluding the session, experts were of the view that the principle of differentiated treatment of developing countries was about fairness, given the inequalities that resulted from historical and economic conditions. The means of implementation and Sustainable Development Goal 17 were very important and, without that Goal, other Goals could not be implemented. There were similar cases in other jurisdictions, for example in Latin America, where the rights of indigenous peoples had been considered; however, the right to development had not been addressed in those cases because the African Charter on Human and Peoples' Rights was the only human rights convention which provided for a justiciable right to development. There was no reason why the right to development could not be invoked in the context of other types of case, such as those concerning climate change. Speakers emphasized the particular issue of policy coherence and noted that it should be invoked in the present era of financial globalization. A framework convention on the right to development would have added value, as it could complement the existing human rights regime and, in the context of financial globalization, such a convention could address extraterritorial impacts. With regard to threats to multilateralism, the right to development should be an "umbrella" over all policies, and human rights should be referenced by relevant organizations such as the United Nations Conference on Trade and Development (UNCTAD).

50. The second panel session focused on the theme of the 2018 high-level political forum, "Transformation towards sustainable and resilient societies". The panel included the Special Rapporteur on the right to development, Saad Alfarargi; the Independent Consultant on International Political Economy, Bhumika Muchhala; the Chairman, Rural Support Programmes Network, Pakistan, Shoaib Sultan Khan; and an independent consultant, Tessa Khan.

51. Mr. Alfarargi focused on the challenges that inequalities – both within and among countries – posed for the realization and effective implementation of the right to development for all. Inequality permeated various aspects of peoples' lives, threatened long-term social and economic development, harmed poverty reduction and adversely affected people s sense of fulfilment and self-worth. The 2015 Investment Policy Framework for Sustainable Development provided a new impetus, reiterating the need to

reduce inequalities and combat discrimination in order to fully realize the right to development for everyone. He referred to five areas of action: (a) identifying those left behind; (b) identifying and combating root causes of inequality; (c) ensuring inclusive and participatory processes; (d) accountability mechanisms; and (e) identifying, sharing and replicating good practices in the reduction of inequalities. He saw his role as bridge builder between relevant stakeholders at the international, regional and local levels.

52. Mr. Khan presented the experience of the Rural Support Programmes Network of Pakistan with implementing the right to development as a practical example of how development could be achieved through self-help efforts. At the core of the network was the element of social mobilization, to enable the poor to participate in decisions that affected their lives. Social mobilization was a holistic approach, including human resources development, a community investment fund, technical assistance, infrastructure development and connectivity with other State and non-State actors. It was an effective and expedient way to realize the right to development of the rural poor and achieve the sustainable development goals.

53. Ms. Muchhala, presenting a study on international investment agreements, industrialization and human rights, spoke of the constraints that the agreements posed to achieving the right to development through inclusive, equitable and sustainable industrialization under Sustainable Development Goal 9. The constraints were investor protections under the agreements, enforced by the investor-State dispute settlement mechanism. The principles and elements of the Declaration on the Right to Development mandated that both national and international development policies created an enabling environment for development, thus making it an effective human rights tool to address obstacles posed by investment agreements. The investor protection measures that affected the ability of States to achieve sustainable development were prohibitions on performance requirements, such as local content and the dispute settlement mechanism. Recommendations included: human rights impact assessments; the provision by international organizations of information on options and best practices; and the inclusion of human rights and women's rights provisions in the agreements.

54. Ms. Khan addressed the way in which the right to development and the broader human rights framework could shape the way in which climate finance should be mobilized and administered. In response to the threat of climate change, States had committed, in multiple instruments, to mobilize the resources required to mitigate and adapt to climate change, including through the Green Climate Fund. The amounts available were a fraction of the amount required to support climate-resilient development. The following principles should inform the operation of climate finance mechanisms: explicit commitments to human rights in governing documents, a robust approach to ensuring the effective participation of stakeholders, the need for human rights infrastructure within climate funds, human rights policies that included quantitative and qualitative indicators and the effective oversight and monitoring of partner entities, including financial intermediaries.

55. In the ensuing discussion, the representatives of the Bolivarian Republic of Venezuela, on behalf of the Non-Aligned Movement, Egypt, Pakistan, Mozambique and Ecuador, took the floor, followed by the Associazione Comunità Papa Giovanni XXIII, speaking on behalf of the Forum of Catholic-inspired Non-governmental Organizations, and Caritas International. Many contributions focused on the implementation of the Sustainable Development Goals, the high-level political forum and issues of synergy and policy coherence and the participation of civil society in the implementation of the Sustainable Development Goals. Representatives spoke of their own experiences with investment agreements and review processes to overhaul treaties and the importance of a human rights focus. Contributions emphasized the need to prioritize climate change and the need to ensure that discrepancies between the amounts pledged in climate funds and disbursement were tackled.

56. In concluding the session, the panellists responded to questions and elaborated on a number of key points. Accountability for climate finance obligations was urgently needed through a common reporting format, aid classification indicators and adoption of best practices. Reference was made to the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights and

the need for human rights impact assessments. More awareness and information sharing was an important part of the Special Rapporteur's mandate and in the high-level political forum, which was for Governments; but he hoped for enough space to listen to and interact with civil society.

D. Contributions by States and other stakeholders

57. The representative of Pakistan spoke of that country's multifaceted approach towards development, including structural reforms, investment-friendly policies and social safety nets for the vulnerable. The China-Pakistan Economic Corridor was a key regional initiative for connectivity and the shared prosperity of nations, and was a practical example of the realization of the right to development by fuelling economic growth in the region. Similar regional projects could promote international cooperation for development and operationalize the right to development.

58. The representative of Cuba noted that international cooperation based on solidarity and humanism and without conditionality was an essential component of its foreign policy. International cooperation by Cuba covered many sectors, including education, health and sport. In the health sector, for example, health programmes were offered to Central American and Latin American countries in the wake of natural disasters and in the training of health professionals. At a national level, limited natural and financial resources had not prevented the implementation of a national strategy. Cuba put the human person at the centre of development, with the aim of reducing inequalities and providing universal and free coverage for education and health.

59. The delegate of Egypt stated that the country's 2030 strategy was based on the principle of inclusive sustainable development and balanced regional development as a general framework for improving the quality of life and welfare in an inclusive way, focusing on the economic, social and environmental dimensions. The strategy served as a basis for incorporating the Sustainable Development Goals in national planning and aligning efforts with their implementation. The strategy had been developed in a participatory manner, and all government agencies collaborated to set comprehensive objectives. The current local, regional and global circumstances gave that strategy a comparative advantage and importance for dealing with international developments.

60. The representative of Indonesia spoke of that country's policies, including: mainstreaming the 2030 Agenda into national development planning; finalizing legal and institutional frameworks for national implementation; engaging all stakeholders; and monitoring and evaluation. On more specific measures, Indonesia had enhanced the budget allocation for social development programmes. At the regional level, the country was planning to convene a leaders' gathering of the Association of Southeast Asian Nations on the Sustainable Development Goals. At the global level, Indonesia actively contributed and participated in South-South cooperation and triangular cooperation in the implementation of the Goals.

61. The delegate of Ethiopia spoke of the country's contribution to peace and security and as a host in the efforts to advance the international development agenda. Regionally, it had led and hosted development dialogues in the African Union and other forums. Ethiopia strongly believed that multisectoral development-oriented programmes were the only means for building resilience at the community and national levels with investments in infrastructure development. It called for stronger international solidarity and cooperation to achieve global development outcomes effectively and in a timely manner.

62. The response of the European Union to the 2030 Agenda was focused on mainstreaming Sustainable Development Goals into the European policy framework and the priorities of the European Commission. The new European Consensus on Development proposed a collective European development policy structured around five core themes of the 2030 Agenda and highlighted key cross-cutting elements. Its external policies and actions were already making concrete contributions to the 2030 Agenda, including a path towards a circular economy, the European Energy Union Initiative, resource efficiency, 0.7 per cent official development assistance and follow-up to the Paris Agreement.

63. The delegate of the Syrian Arab Republic spoke of the development of national legislation, laws and policies to guarantee sustainable development, for instance, laws and financial policies that ensured minimum wages and income equality. There were measures to ensure equality and deal with discriminatory policies and practices. The country had adopted poverty alleviation programmes, provided social insurance, rural development measures, social protection programmes and empowerment of women initiatives. It had cooperated with a number of United Nations agencies to realize Sustainable Development Goals and, despite the enormous challenges faced, it remain committed and was making all possible efforts to implement the Goals.

64. The representative of the Bolivarian Republic of Venezuela spoke of its comprehensive approach to the implementation of the right to development. It had promoted integration models in the regional and international spheres, based on international cooperation and solidarity. Highlights included the Bolivarian Alliance for the Peoples of our America, the Union of South American Nations, PetroCaribe and the Community of Latin American and Caribbean States. It had developed a participatory policy promoting dialogue, gender perspectives, inclusion and non-discrimination. The representative made reference to the national human rights action plan 2016–2019 and emphasized the need for a profound transformation of the economic system to eradicate poverty and realize the right to development.

65. The delegate of South Africa spoke of the country's implementation of the Sustainable Development Goals, on the basis of both the national development plan and the current medium-term strategic framework and on the Constitution, which spoke to a variety of rights aligned to the right to development. Implementation was facilitated by the involvement of all relevant line-function departments across the Government. Intense task team exercises had been created for matters relating to sustainable development and to fast-track the Government's delivery programme, called Operation Phakisa. The delegate noted the country's regional efforts, funding gaps, a knowledge hub related to the Goals and the African Union-United Nations Framework for the implementation of Agenda 2063 and the 2030 Agenda for Sustainable Development, which envisioned stronger coordination between the two organizations to contribute positively to people-centred and planet-sensitive structural transformation in Africa.

66. The delegate of Ecuador noted that the country had incorporated Sustainable Development Goals into the relevant national development plan (called "One life"), which ensured human rights across the entire life cycle for all individuals. The plan also sought full economic fulfilment at the national and global levels, full citizenship, transparency and the fight against corruption, ensuring sovereignty and the promotion of peace. This was constructed on the basis of dialogue and on a democratic process based on their common interest, enshrined in diversity. In terms of inequalities, Ecuador provided for cooperation in specific spheres, linked to international priorities, the rights of persons with disabilities, the eradication of discrimination and the roll-out of projects all across Latin America and the Caribbean. The delegate underlined the importance of strategic funding in order to work towards sustainable development on the basis of common and shared principles, and urged all States to mobilize resources, both private and public, and identify priorities among different development objectives.

67. The representative of the Plurinational State of Bolivia spoke of the national development plan, which was within the framework of integrated development for living well national development plan 2006–2011. The plans were oriented towards the strengthening of an integral State and well-being and coordination between different levels of government, whereby democratic autonomy and economic sovereignty were bolstered. This would facilitate people's access to basic fundamental services and the implementation of a new environmental model. The representative referred to the country's growth and poverty reduction efforts and the policy of investment in various sectors in the light of the implementation of the 2030 Agenda. The country was convinced that the right to development was inherent and was bound to a culture of peace and cooperation based on mutual knowledge, respect and cultural diversity.

68. The representative from Associazione Comunità Papa Giovanni XXIII stated that it was involved in a wide range of social activities and development initiatives at grass-roots

level, working with people living in extreme poverty in both developing and developed countries. This included a range of projects in Italy in its implementation of the national sustainable development strategy, social cooperatives, the anti-trafficking programme and the civil peace corps. It also had projects in Zambia, Bangladesh and Brazil, dealing with orphans, the right to education and violence against children and young women.

69. The representative from the International Campaign to Abolish Nuclear Weapons stated that civil society had been a fundamental actor in advancing the issues of disarmament and human rights. Conventional weapons had a negative impact on development, as recalled in article 7 of the Declaration on the Right to Development and in Strategic Development Goal 16. The representative called on all countries to ratify agreements that prohibited conventional weapons causing humanitarian impact and to achieve complete disarmament, with special reference to the Treaty on the Prohibition of Nuclear Weapons so that countries could release resources for global development.

E. Draft right to development criteria and the corresponding operational subcriteria

70. The Working Group continued its consideration of the draft right to development criteria and the corresponding operational subcriteria prepared by the high-level task force (see A/HRC/15/WG.2/TF/2/Add.2, annex). Speaking on behalf of the Non-Aligned Movement, the representative of the Bolivarian Republic of Venezuela recalled Human Rights Council resolution 36/9, in which the Council decided that the Working Group should finalize the document on criteria and subcriteria no later than the nineteenth session. The representative observed that there were still no real results of that work and expressed the wish to move forward. The representative noted that, in each session during discussion of the document, new points of view appeared, hindering the adoption of the document, and that it was now the right time to take effective measures regarding criteria and subcriteria. The European Union reiterated that there was no way forward other than a consensus and that consensus had been undermined when it was insisted that a legally binding document was the only possible outcome of the discussions.

71. Representatives from Egypt, the Islamic Republic of Iran, Pakistan, Brazil, South Africa, Japan and the Bolivarian Republic of Venezuela took the floor to present their views on the agenda item and the way forward with contributions by Associazione Comunità Papa Giovanni XXIII, speaking on behalf of the Forum of Catholic-inspired Non-governmental Organizations, the Centre Europe-tiers monde and the Indian Council of South America. The Chair-Rapporteur summarized the exchange of views and said that it was clear that consideration of the criteria and subcriteria was an issue on which there was no common ground and that existing divergent views would continue to persist. As an alternative, he proposed that the Secretariat could "clean up" the text and remove redundancies, while retaining existing language, with proposals from delegations reflected as they were. Additionally, the Secretariat could provide alternate language from the relevant existing consensus documents and submit it for consideration by the Working Group at its following session in such a way as to open up the possibility for agreement. This proposal was aimed at bridging the existing gap and moving forward in a favourable direction. Delegates' feedback to the proposal was mixed and the representative of the Non-Aligned Movement suggested working on the existing text for the remainder of the meeting, which some delegates from the Movement supported. The delegate of the European Union stated that, in the present circumstances, he could not make any specific comments on the provisions of the document and would both retain existing reservations in the text and place reservations on any new proposals or modifications. The delegate of Japan also reserved all criteria and subcriteria that Japan had previously reserved and was not ready to discuss any new proposals, in addition reiterating that Japan did not support the adoption of a legally binding document. The Working Group completed a reading of criterion 1 (a) to criterion 1 (e) alt 1 during the meeting.

F. Standards for the implementation of the right to development

72. The Working Group continued its discussion on the elaboration of standards for the implementation of the right to development. In that regard, the Group had before it two documents: the report on standards for the implementation of the right to development (A/HRC/WG.2/17/2), which had been prepared and presented by the Chair-Rapporteur at the Group's seventeenth session, and the proposals by the Non-Aligned Movement on a set of standards regarding the implementation and realization of the right to development, which was contained in document A/HRC/WG.2/18/G/1.

73. The delegate of the European Union noted at the start of the discussion that it would make no change in its position. It would not comment on specific proposals and would maintain the same proposals that it had made previously. The representative of the Non-Aligned Movement spoke of the set of standards proposed by the Chair-Rapporteur as a way to move forward and fulfil the Group's mandate. The Movement was prepared to listen to proposals that had to be included and wanted the Working Group to work together with the Chair-Rapporteur and the Special Rapporteur. It also referred to the content in the draft set of standards presented by the Non-Aligned Movement. The draft contained provisions regarding full respect for international standards and cooperation between States, the removal of barriers, the implementation of the Sustainable Development Goals, in particular Goal 17, the responsibility of States to cooperate to eliminate injustice, cease unilateral coercive measures and respect for the political independence and integrity of States and the principle of non-interference.

74. The delegate of Japan made a reservation on the set of standards. Representatives from South Africa and the Plurinational State of Bolivia took the floor, with contributions by Associazione Comunità Papa Giovanni XXIII, speaking on behalf of the Forum of Catholic-inspired Non-governmental Organizations, Centre Europe-tiers monde and the Indian Council of South America. The delegate of South Africa mentioned that it would have been useful if the topic had been discussed in the panel discussions and agreed that the proposal by the Non-Aligned Movement and the criteria and subcriteria were equally important for moving forward. The delegate noted that placing the right to development into an international legal framework on par with other human rights was imperative and added that a Convention would create new momentum and complement the current human rights regime and was in line with the prevention mandate of the Council. The delegate of the Plurinational State of Bolivia reiterated the need for a legally binding treaty. Civil society organizations supported the need for a legally binding treaty and underlined that the basic reference document in that regard was the Declaration on the Right to Development. Civil society organizations also referred to a non-paper that they had submitted in the previous session on standards, items to be taken into consideration and inclusion of indigenous persons.

IV. Conclusions and recommendations

75. **At the final meeting of its nineteenth session, on 26 April 2018, the Working Group adopted by consensus the present conclusions and recommendations, in accordance with its mandate as established by Commission on Human Rights resolution 1998/72.**

A. Conclusions

76. **The Working Group expressed its appreciation to all those who had contributed to the proceedings of its nineteenth session.**

77. **The Working Group welcomed the presence of the United Nations Deputy High Commissioner for Human Rights at the session and took note of her opening remarks, delivered on behalf of the High Commissioner for Human Rights, in which she reiterated the full support of the Office of the United Nations High Commissioner for Human Rights for the Working Group and for the full realization of the right to**

development, as well as the enhancement of support from relevant bodies of the United Nations System for that purpose.

78. The Working Group welcomed the re-election of the Chair-Rapporteur and commended him for his able stewardship in guiding the deliberations during the session.

79. The Working Group expressed its appreciation for the interactive dialogue with the Special Rapporteur on the right to development.

80. The Working Group held discussions on the draft right to development criteria and the corresponding operational subcriteria in relation to the elaboration of a comprehensive and coherent set of standards for the implementation of the right to development, and held discussions on these standards.

81. The Working Group took note of the report of the Chair-Rapporteur entitled "Standards for the implementation of the right to development" and the proposal by the Movement of Non-Aligned Countries for a comprehensive and coherent set of standards for the implementation of the right to development.

82. The Working Group expressed its appreciation for the interactive dialogue on the implementation and realization of the right to development, including the implications of the 2030 Agenda for Sustainable Development and a possible engagement with the high-level political forum on sustainable development. In this regard, the Working Group took note with appreciation of the adoption of Human Rights Council resolution 37/24 on the promotion and protection of human rights and the implementation of the 2030 Agenda for Sustainable Development and resolution 37/25 on the need for an integrated approach to the implementation of the 2030 Agenda for Sustainable Development for the full realization of human rights, focusing holistically on the means of implementation.

83. Following the consideration of the draft right to development criteria and the corresponding operational subcriteria during its nineteenth session, the Working Group recognized with appreciation the preparation by the Secretariat of a conference room paper compiling the comments and views submitted by Governments, groups of Governments, regional groups and stakeholders on the draft right to development criteria and operational subcriteria (A/HRC/WG.2/18/CRP.1).

84. The Working Group took note of the paper prepared by the Chair-Rapporteur entitled "The right to development: finding a way forward" (A/HRC/WG.2/19/CRP.2), in which he identifies major challenges to the realization of the right to development.

B. Recommendations

85. The Working Group recommended:

(a) That the United Nations High Commissioner for Human Rights and his Office take sufficient measures to ensure a balanced and visible allocation of resources and pay due attention to the visibility and effective implementation and mainstreaming of the right to development by systematically identifying and undertaking tangible projects dedicated to this right, and that they continue to update the Human Rights Council and the Working Group on progress in that regard;

(b) That the Working Group continue to accomplish its mandate, through a collaborative process of engagement, in accordance with Commission on Human Rights resolution 1998/72 and other relevant resolutions of the Human Rights Council and the United Nations General Assembly;

(c) That the High Commissioner include in his next annual report an analysis on the realization and implementation of the right to development, taking into account existing challenges and making recommendations on how to overcome

them, and concrete proposals for supporting the Working Group in fulfilling its mandate;

(d) That the Working Group, taking into account Human Rights Council resolutions 9/3 and 36/9, take note of the discussions of the criteria and operational subcriteria, contained in conference room paper A/HRC/WG.2/18/CRP.1;

(e) That the Working Group, in its future deliberations, consider the contributions made by States at the national, regional and international levels to the implementation of the right to development and on the implications of the 2030 Agenda for Sustainable Development;

(f) That the Working Group invite the Special Rapporteur on the right to development, in consultation with Member States, to continue to contribute to the work of the Working Group in accordance with his mandate as established by Human Rights Council resolution 33/14;

(g) That the Chair-Rapporteur present the report of the nineteenth session of the Working Group to the General Assembly, including reporting on and promoting the integration of the right to development in the implementation of the 2030 Agenda.

Annex

List of participants

States Members of the Human Rights Council

Angola, Brazil, Burundi, Chile, China, Côte d'Ivoire, Croatia, Cuba, Ecuador, Egypt, Ethiopia, Georgia, Germany, Hungary, Iraq, Japan, Kenya, Mexico, Nepal, Nigeria, Pakistan, Panama, Philippines, Qatar, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Togo, Tunisia, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Zimbabwe.

States Members of the United Nations

Algeria, Argentina, Austria, Azerbaijan, Bahrain, Bangladesh, Bolivia (Plurinational State of), Botswana, Bulgaria, Colombia, Costa Rica, Democratic Republic of Congo, Estonia, France, Ghana, Greece, Guatemala, Honduras, India, Indonesia, Iran (Islamic Republic of), Jordan, Kazakhstan, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Libya, Luxembourg, Madagascar, Malaysia, Malta, Morocco, Mozambique, Myanmar, Namibia, Romania, Russian Federation, Singapore, Sri Lanka, Sweden, Syrian Arab Republic, Uruguay.

Non-member observer States

Holy See, State of Palestine.

Intergovernmental organizations

European Union, Organization of Islamic Cooperation, South Centre, United Nations Conference on Trade and Development, United Nations Development Programme.

Non-governmental organizations in consultative status with the Economic and Social Council

General

Caritas Internationalis, Centre Europe-tiers monde, Congregations of St. Joseph, New Humanity.

Special

Associazione Comunità Papa Giovanni XXIII, Association Points-Coeur, Company of the Daughters of Charity of St. Vincent de Paul, Dominicans for Justice and Peace (Order of Preachers), Drépavie, Fundación Latinoamericana por los Derechos Humanos y el Desarrollo Social (FUNDALATIN), International Campaign to Abolish Nuclear Weapons (ICAN), Istituto Internazionale Maria Ausiliatrice delle Salesiane di Don Bosco, International Movement of Apostolate in the Independent Social Milieus (MIAMSI), International Organization for the Right to Education and Freedom of Education (OIDEL), International Association of Democratic Lawyers, Teresian Association, International Volunteerism Organization for Women, Education and Development (VIDES).

Roster

Indian Council of South America (CISA).

United Nations A/HRC/39/57

General Assembly

Distr.: General
10 July 2018

Original: English

Human Rights Council
Thirty-ninth session
10–28 September 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, to protect human rights and ensure accountability for violations and abuses relating to the activities of private military and security companies

Note by the Secretariat

1. In its resolution 36/11, decided to establish a new open-ended intergovernmental working group, for a period of three years, with a mandate to elaborate the content of an international regulatory framework, without prejudging the nature thereof, to protect human rights and ensure accountability for violations and abuses relating to the activities of private military and security companies, to be informed by the discussion document on elements for an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies, as prepared by the Chair-Rapporteur, and further inputs from Member States and other stakeholders. The Council also decided that the working group would meet for five working days and submit an annual progress report to the Council in conformity with its annual programme of work.

2. Upon request by the Chair-Rapporteur of the intergovernmental working group, the first session, initially scheduled to be held from 28 May to 1 June 2018, has been postponed to a later date, which remains to be determined.

GE.18-11391(E)
1811391

Please recycle

United Nations A/HRC/39/58

General Assembly

Distr.: General
10 July 2018

Original: English

Human Rights Council
Thirty-ninth session
10–28 September 2018
Agenda items 3 and 5
Promotion and protection of all human rights, civil, political economic, social and culture rights, including the right to development

Human rights bodies and mechanisms

Regional arrangements for the promotion and protection of human rights

Report of the Human Rights Council Advisory Committee

GE.18-11383(E)

1811383

Please recycle

Contents

		Page
I.	Introduction	3
II.	Establishment of regional and subregional human rights mechanisms	3
III.	Achievements of regional and subregional human rights arrangements	6
IV.	Challenges faced by regional and subregional human rights arrangements	8
V.	Role of the Office of the United Nations High Commissioner for Human Rights in the advancement of regional and subregional human rights arrangements	11
VI.	Contribution of other actors to regional and subregional human rights arrangements	12
VII.	Implications for the protection of human rights through regional and subregional human rights arrangements	14
VIII.	Conclusions and recommendations	16

I. Introduction

1. Pursuant to the adoption by the Human Rights Council of decision 32/115, the Advisory Committee was mandated to prepare a report on regional arrangements for the promotion and protection of human rights, in particular on the progress made in the establishment of regional and subregional arrangements for the promotion and protection of human rights; their achievements in all regions of the world; and the role that has been played and can be played in the future by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in advancing cooperation between international and regional human rights mechanisms. The Committee was further mandated to identify ways to increase the role that regional and subregional arrangements play in promoting and protecting human rights and to reinforce universal human rights standards, including those contained in international human rights instruments, and to submit the report to the Human Rights Council at its thirty-ninth session. It is hoped that the present submission can take advantage of the celebrations marking the seventieth anniversary of the Universal Declaration of Human Rights and the twenty-fifth anniversary of the Vienna Declaration and Programme of Action to promote the role of regional arrangements.

2. At its seventeenth session in August 2016, the Committee heard presentations from experts, held discussions on regional arrangements for the promotion and protection of human rights and established a drafting group for the preparation of a progress report. The group currently comprises Mohamed Bennani, Laurence Boisson de Chazournes, Mario Luis Coriolano, Karla Hananía de Valera, Mikhail Lebedev, Xinsheng Liu, Kaoru Obata, Katharina Pabel (Chair), Anantonia Reyes Prado, Changrok Soh (Rapporteur) and Imeru Tamrat Yigezu.

3. At the same session of the Advisory Committee, the drafting group elaborated a questionnaire, in accordance with decision 32/115, in which the Council encouraged the Committee to consider the views and inputs of relevant stakeholders. The questionnaire was disseminated to various stakeholders, including States Members of the United Nations, international and regional organizations, relevant special procedures mandate holders and treaty bodies, national human rights institutions and civil society organizations, with a deadline of 31 October 2016. As of 1 February 2017, 23 responses to the questionnaire had been received, including 9 from States, 5 from non-governmental organizations (NGOs), 7 from national human rights institutions and 2 from other organizations.

II. Establishment of regional and subregional human rights mechanisms

4. The present report identifies five regions or areas where regional human rights mechanisms have been (or are to be) established; Europe, the Americas, Africa, the Arab States and Asia.[1] The first four regions already possess regional and subregional mechanisms while Asia only has a few subregional mechanisms. Although regional and subregional human rights bodies are very different, particularly in how their jurisdictions and responsibilities overlap, the present study treats them as different facets of the same process of localizing the protection and promotion of human rights. An overview of those arrangements is set out below.

5. Europe has one of the most effective human rights regimes, stemming in part from its combination of expert networks and intergovernmental cooperation. Its origins date back to the formation of the Council of Europe in 1949 and the adoption of the European Convention on Human Rights and Fundamental Freedoms in 1950. The European Court of Human Rights, established in 1959 and restructured through Protocol 11 in 1998, functions as the main human rights protection mechanism in Europe. All 47 Council of Europe member States are party to the European Convention on Human Rights. Judges are elected

[1] For the purposes of this report, Asia refers to the entire Asia-Pacific region, including Oceania.

by the Parliamentary Assembly of the Council of Europe and enjoy a high degree of independence from their respective Governments. The States can also file State-to-State complaints and in extreme cases even demand expulsion for flagrant and systematic violations of the Convention. The decisions of the Court create binding legal obligations for the State concerned.[2] The European Social Charter, which addresses economic and social rights, is subject to quasi-judicial enforcement. Insofar as they refer to legally binding treaty provisions, the decisions and conclusions of the European Committee of Social Rights — the monitoring body established by the treaty — must be respected by the States concerned, even if they are not directly enforceable in domestic legal systems. They set out the law and can provide the basis for positive developments in social rights through legislation and case law at national level.[3] Other important organizations for the protection and promotion of human rights in Europe include the European Union Agency for Fundamental Rights and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE).

6. The Inter-American human rights mechanism dates back to the approval of the American Declaration of the Rights and Duties of Man by the Organization of American States (OAS) in April 1948. The Declaration brought about the adoption of the OAS Charter and the Inter-American Commission on Human Rights was established in 1959 to enhance the implementation of human rights protections among the 35 OAS member States. Following the adoption of the American Convention on Human Rights in 1969, the Inter-American Court of Human Rights was established in 1979. The Commission monitors the implementation of human rights by member States by making country visits, publishing country and thematic reports and carrying out on-site visits. It also has a quasi-judicial function in that it can interpret human rights instruments created by the OAS and makes non-legally binding recommendations on individual complaints. Individual applications can be lodged with the Commission based on the Declaration or the Convention.[4] All cases go through the Commission but only those OAS member States that have ratified the Convention and accepted the jurisdiction of the Court can be brought before it. Some other regional human rights treaties, such as the Inter-American Conventions to Prevent and Punish Torture, on the Prevention, Punishment and Eradication of Violence against Women and on Forced Disappearance of Persons, and the Additional Protocol to the Convention in the Area of Social, Economic and Cultural Rights (San Salvador Protocol) also allow for individual petitions to be lodged before the Commission.[5]

7. The African human rights mechanism emerged as a response to the challenges of decolonization, racial discrimination, environmental protection and refugees. The African Charter on Human and Peoples' Rights was adopted in 1981 and came into force in 1986. In accordance with the Charter, the African Commission on Human and Peoples' Rights was set up in 1987. The African Court of Human and Peoples' Rights was established by a protocol to the Charter in 1998, came into force in 2004 and was operational in 2006. As of September 2016, the African Charter had been ratified by 54 of the 55 member States of the African Union, the exception being South Sudan, and nearly half of the member States have ratified the Protocol to the Charter.[6] The Commission accepts individual and State complaints or communications based on the Charter, while the Court on may receive applications either from the Commission, States parties to the Protocol, or African intergovernmental organizations. Non-governmental organizations with observer status before the Commission and individuals from States which have made a declaration accepting the jurisdiction of the Court can also institute cases directly before the Court, but only six African Union member States have accepted the competence of the Court to handle

[2] See European Court of Human Rights, "The EHCR in 50 Questions" (February 2014), available at www.echr.coe.int/documents/50questions_eng.pdf.

[3] For more details, see www.coe.int/en/web/turin-european-social-charter/about-the-charter.

[4] See International Justice Resource Center, "Inter-American human rights system", available from www.ijrcenter.org/regional/inter-american-system/.

[5] Inter-American Commission on Human Rights, "The Organization of American States", available from www.oas.org/en/iachr/mandate/basic_documents.asp.

[6] Other important institutions in the context of the African Union include the African Peer Review Mechanism and the Pan-African Parliament.

such complaints. As of January 2016, the Court had received 74 applications and finalized 25 cases.[7] The Commission, however, has a longer history of judicial work. As of November 2017, it had received 659 communications, of which it had finalized 446. Another important regional human rights mechanism is the African Committee of Experts on the Rights and Welfare of the Child, which is tasked with promoting and protecting the rights enshrined in the African Charter on the Rights and Welfare of the Child, which came into force in 1999 and has been ratified by 48 member States. In addition, there are subregional courts which have over the years adjudicated on a number of important human rights cases, such as the Economic Community of West African States (ECOWAS) Court of Justice and the East African Court of Justice.

8. The current Arab Charter on Human Rights was adopted in May 2004 by the Council of the League of Arab States (LAS) at the Summit level after the revision of an earlier version that was adopted in 1994 but not ratified by any member State. of the League. The Charter entered into force in March 2008, two months after the seventh document of ratification had been deposited with the General Secretariat of the League, pursuant to paragraph 2 of article 49 of the Charter. The Charter has been ratified by 14 out of 22 LAS member States. However, it includes many provisions that are incongruent with international standards.[8] The Arab Human Rights Committee was established in 2009 to oversee the implementation by State parties to the Charter of the rights and freedoms set forth in the Charter and to issue its observations and recommendations in accordance with the provisions of the Charter. In 2014, the LAS Council adopted the Statute of the Arab Court of Human Rights. The Court will have jurisdiction over all cases resulting from the implementation and interpretation of the Charter, or any other Arab convention in the field of human rights. Another important mechanism to consider is the Organization of Islamic Cooperation (OIC), a transregional organization with members in Africa, Europe, Asia and even South America. The OIC Independent Permanent Human Rights Commission was launched in 2011 and has identified the rights of women, the rights of the child, human rights education and the right to development as its key priorities.[9]

9. The Asia-Pacific region does not yet possess a regional arrangement for the protection of human rights, even though several workshops to discuss the possibility have been convened since 1990.[10] However, some progress has been made at the subregional level, particularly in South-East Asia. The first agreement of the Association of Southeast Asian Nations (ASEAN) to consider the establishment of a regional human rights arrangement was made in June 1993 following the Vienna Declaration and Programme of Action. In November 2007, the ASEAN member States signed the Charter of the Association of South East Asian Nations, in which the promotion and protection of human rights was expressed, along with a commitment to the establishment of a regional human rights mechanism. Accordingly, the ASEAN Intergovernmental Commission on Human Rights was established in July 2009. In 2012, the countries of ASEAN unanimously adopted the ASEAN Human Rights Declaration but a human rights court has not yet been established. Although progress at the subregional level is promising, a regional framework for the entire Asia region is still a work in progress.[11] One example of this was the proposal by the Constitutional Court of the Republic of Korea to create an Asian human rights court, which was announced at the third congress of the World Conference on Constitutional Justice in 2014.

---

[7] See http://en.african-court.org/index.php/cases/2016-10-17-16-18-21#finalised-cases.

[8] See Mervat Rishmawi, "The revised Arab Charter on Human Rights: a step forward?", *Human Rights Law Review*, vol. 5, No. 2 (January 2005).

[9] See www.oic-iphrc.org/en/about.

[10] See www.hurights.or.jp/archives/focus/section2/1997/03/un-workshops-on-regional-arrangement-for-human-rights-in-the-asia-pacific.html.

[11] See ASEAN Intergovernmental Commission on Human Rights, available from http://aichr.org/press-release/the-adoption-of-the-asean-human-rights-declaration-ahrd-at-the-21st-asean-summit-and-the-special-meeting-of-the-asean-intergovernmental-commission-on-human-rights-aichr/.

III. Achievements of regional and subregional human rights arrangements

Judicial and quasi-judicial decisions

10. The most visible contributions of regional human rights arrangements have occurred in the form of court rulings and attempts by commissions to sway the behaviour of member States.[12] The Inter-American Commission on Human Rights and the landmark decisions of the Inter-American Court of Human Rights even have an impact on countries beyond the scope of the original ruling. For example, military officers from several Latin American dictatorships had benefited from amnesty laws until the Court ruled in the case of *Barrios Altos v. Peru* in 2001 that they were in violation of international human rights law. Consequently, several countries, including Argentina and Chile, repealed their amnesty legislation and began to prosecute military officers for violations going back to the 1970s. Indeed, throughout the 2000s, the preventive approach of the Court to human rights violations, especially its demands for reparations, led some to consider it a "unique driving force for change."[13]

11. The decisions of the European Commission of Human Rights[14] and later the European Court of Human Rights have also had a considerable impact on law and practice in several States. Examples of this include changes to detention practices in Belgium, Germany, Greece and Italy, the treatment of aliens in the Netherlands, Switzerland and other countries, press freedom legislation in Britain, wiretapping regulations in Switzerland, legal aid practices in Italy and Denmark, procedures to speed up trials in Italy, the Netherlands and Sweden, and privacy legislation in Italy.[15] In *Dudgeon v. United Kingdom* in 1981, the Court held that the criminal laws of Northern Ireland prohibiting consensual sex between consenting adult males violated the right to privacy, as protected by article 8 of the European Convention on Human Rights. As a consequence of the judgment, homosexual relations between males were decriminalized in Northern Ireland in 1982.[16] Even if the judgments of the Court are only formally binding vis-à-vis the respective State, the case law develops human rights standards with significant relevance for all member States.

12. In 2001, the African Commission on Human and Peoples' Rights considered a communication that dealt with alleged violations of the human rights of the Ogoni people in Nigeria. It marked the first time the Commission was able to deal with alleged violations of economic, social and cultural rights in a substantial and firm manner.[17] Another interesting example of court activism is the East African Court of Justice, which has reinterpreted its mandate to include cases of human rights violations.[18] Furthermore, the ECOWAS system, which is best known for its jurisprudence on women's and children's rights, allows *actio popularis*, the filing of complaints by third parties on behalf of victims, which even the European mechanism does not permit.

---

[12] It should be noted that the African, Inter-American and European commissions on human rights, among other regional arrangements, use precautionary measures where there is an imminent risk of irreparable harm to individuals or groups. That is a powerful protection mechanism, especially for human rights defenders at risk.

[13] Geneviève Lessard, "Preventive reparations at a crossroads. The Inter-American Court of Human Rights and Colombia's search for peace", *International Journal of Human Rights*, (January 2017).

[14] The precursor of the enlarged European Court of Human Rights until the entry into force of Protocol 11 in 1998.

[15] See Jack Donnelly, *Universal Human Rights in Theory and Practice*, 3rd ed. (Ithaca, New York, Cornell University Press, 2013).

[16] European Court of Human Rights factsheet, "Homosexuality: criminal aspects", (2014), available at www.echr.coe.int/Documents/FS_Homosexuality_ENG.pdf.

[17] Fons Coomans, "The Ogoni case before the African Commission on Human and Peoples' Rights", *International and Comparative Law Quarterly*, vol. 52 (July 2003).

[18] Ally Possi, "The East African Court of Justice: towards effective protection of human rights in the East African Community", *Max Planck Yearbook of United Nations Law*, vol. 17 (2013).

Standard setting

13. Although court decisions, by establishing legal precedents, constitute a form of strong standard-setting, regional arrangements are also successful at diffusing and reinforcing human rights norms and standards in their regions in cooperation with member States. The European human rights regime has contributed to human rights advancements within European countries and serves as a reference model worldwide. The creation of and high compliance with human rights norms has been possible due to strong pre-existing norms within Europe, but the European Convention on Human Rights has also helped to develop human rights standards in new member States, particularly with the accession of many eastern and south-eastern member States after 1990. Montenegro, which acceded to the Council of Europe in 2007, exemplifies the way in which a regional human rights mechanism can assist standard-setting in a collaborative fashion, not only through court rulings. According to the Government of Montenegro, the country has adopted numerous strategic documents and action plans, including on displaced people, improvement of the status of Roma and Egyptians, human trafficking, lesbian, gay, bisexual and transgender rights and the protection of children and the elderly. In terms of legal changes, Montenegro has amended the Law on the Prohibition of Discrimination, the Law on Gender Equality, the Law on the Protector of Human Rights and Freedoms and adopted a Law on the Prohibition of Discrimination against Persons with Disabilities. In line with recommendations from the Council of Europe, Montenegro also included a comprehensive definition of hate speech in the Law on the Prohibition of Discrimination.[19]

14. This collaborative approach is evident in Africa as well. At its fifth session, the African Commission on Human and Peoples' Rights resolved that States parties should incorporate the teaching of human rights into their educational curricula and establish committees on human rights at national, subnational and regional levels. Some African countries, such as Nigeria, have incorporated the provisions of the African Charter on Human and Peoples' Rights into their domestic law. The Commission has also sponsored a number of seminars and international conferences covering a broad spectrum of issues, such as community work, economic, social and cultural rights, HIV and AIDS in Africa, prisons and women's rights.[20]

Publication of country reports, on-site observation and country visits

15. Regional arrangements also play a crucial role in collecting and disseminating information about human rights conditions in the region, which allows cross-country comparisons and the development of best practices. In 2014, the press unit of the European Court launched six new factsheets on the case law concerning elderly people, persons with disabilities, political parties and associations, hunger strikes in detention, migrants in detention and domestic violence. It has now prepared a total of 59 factsheets in English and French, many of which have also been translated into German, Italian, Polish, Romanian, Russian and Turkish with the support of the Governments concerned. The press unit has also prepared country profiles covering each of the 47 member States. In addition to general and statistical information on each State, the country profiles provide information on the most noteworthy cases concerning that State.[21]

16. Between 1970 and 1980 the Inter-American Commission on Human Rights put pressure on repressive Governments. Its reporting on Chile and Argentina under military law had particular significance for internal and international human rights advocates. In the early 1990s, the Commission began to closely monitor countries with fragile democratic institutions that were still experiencing political violence. It published four reports on the human rights situation in Haiti between 1990 and 1995 and three reports on Guatemala between 1993 and 2001. In 1998, the Commission visited Peru and prepared a

[19] Survey response by the Government of Montenegro.

[20] Timothy F. Yerima, "Over two decades of African Commission on Human and People's Rights: flying or fledgeling", *Global Journal of Human Social Science Arts and Humanities*, vol. 12, No. 12 (2012).

[21] See, for example, European Court of Human Rights, annual report 2014.

comprehensive report on the human rights situation. The report was released in June 2000 and was crucial in ending the Fujimori regime.[22] In 1999 the Commission published a major report on the human rights situation in Colombia, in which for the first time it considered international humanitarian law, i.e., the law of armed conflict, to identify the legal regime governing the ongoing internal armed conflict. More recently, reports were issued on Guatemala (2016) and the Bolivarian Republic of Venezuela (2018) which drew attention to serious human rights challenges in those countries. The Commission has also publicized prominent individual cases, such as its issuance of a public condemnation of the murder of human rights defender Marisela Escobedo in Mexico.[23] It regularly conducts on-site visits to countries and publishes press releases with its recommendations. The Commission issues an annual report, in which it highlights the most serious human rights violations in the Americas. It also publishes thematic reports, of which the most recent refer to the criminalization of human rights defenders and human rights standards in relation to human mobility. Furthermore, it has been asking for transparency about the detention facility at Guantánamo Bay, Cuba, and urging its closure since the early 2000s.

17. While the African Commission on Human and People's Rights is responsible for reviewing State compliance through biannual reports on country efforts to implement the African Charter, many States combine several years' worth of reports instead of submitting biannual reports. Moreover, seven member States have yet to submit a report at all. That can be attributed to a lack of resources and interest in those States. African Commission communications have only a 15 per cent implementation rate. Nevertheless, even that level of transparency has had an impact. According to the Government of Kenya, the reporting requirements of the regional mechanism have played a major role in strengthening the rights of indigenous people. The new Kenyan Constitution provides several avenues for the protection and strengthening of the personal and collective rights of indigenous peoples. Article 27 obliges the State to develop legislation and affirmative action programmes. Article 56 obliges the State to provide for adequate representation of "marginalized groups" at all levels of government, undertake affirmative action on behalf of those groups and promote the use of indigenous languages and the free expression of traditional cultures. Article 100 requires the legislature to enact a law which will promote the representation of marginalized communities.[24]

18. The Arab Human Rights Committee carried out its first examination of State reports in 2012 and 2013, starting with Jordan, then Algeria and Bahrain. The concluding remarks of the Committee are now published on its website in Arabic. Civil society organizations are allowed to disseminate the concluding remarks in their countries for public outreach (through the media, websites and social networks) and follow up with the national authorities.[25]

IV. Challenges faced by regional and subregional human rights arrangements

Structural and financial challenges

19. Broadly speaking, structural challenges refer to the way in which a lack of political will, membership issues, or greater than expected demand have manifested themselves in poorly resourced or unbalanced regional arrangements. The global human rights system is trying to do more with less. Thus, the greatest obstacle to the effective functioning of both the Inter-American Commission and Court is the lack of adequate human and financial resources. The 30 staff lawyers at the Commission, who are presently handling nearly 1,250

[22] Robert K. Goldman, "History and action: the inter-American human rights system and the role of the Inter-American Commission on Human Rights", *Human Rights Quarterly*, vol. 31, No. 4 (November 2009).

[23] See www.oas.org/en/iachr/media_center/preleases/2011/127.asp.

[24] Survey response by the Government of Kenya.

[25] See report of the International Federation for Human Rights and others on a seminar held in Cairo in February 2013, "The Arab League and human rights: challenges ahead", (May 2013).

open cases, cannot keep pace with the annual increase in the number of petitions and thus cannot meet the reasonable expectations of States and victims for their prompt resolution. The Commission receives an average of over 2,000 new petitions each year.

20. Membership issues also hinder both the Inter-American Commission and the Court. As of 2013, 25 of the 35 OAS member States had ratified the Convention, while 2 have subsequently denounced it, leaving 23 active parties. Only 21 of those parties have acknowledged the jurisdiction of the Court in contentious cases. Notably, the United States of America and Canada have not ratified the American Convention on Human Rights, although the United States remains the largest donor of voluntary funds to the Commission, despite the fact that it has not signed the Convention. It contributes $2.3 million a year and an additional $300,000 to the Special Rapporteur for freedom of expression. Very few OAS member States contribute voluntary funding to the Commission and the Court.[26] In 2016, when the Commission faced its most serious financial crisis, OHCHR was crucial in calling attention to the problem. Among the challenges facing the Arab Human Rights Committee are the delayed submissions by States parties of their first and periodic reports on the implementation of the Arab Charter on Human Rights and the effective implementation of the Committee's recommendations at the national level. Furthermore, eight LAS member States have still not ratified the Charter and are therefore not yet members of the Committee.

21. The African Commission for Human and Peoples' Rights also faces many structural and resource challenges. Among them are a lack of capacity to ensure that the system is accessible to rights holders and that norms and standards are effectively implemented and enhanced at the national level; to monitor the non-compliance of member States with their obligation to submit regular reports; to overcome challenges in implementing the decisions of the Commission; and a very limited operating budget. For example, in 2002/2003, the Commission only had a budget of $790,000, although this was subsequently increased to around $7.9 million in 2011.[27] As with OAS, fiscal challenges are compounded by membership problems. As of July 2017, only 8 of the 30 States parties to the Protocol to the Charter had made the declaration recognizing the competence of the Court to receive cases from NGOs and individuals. They are Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Tunisia and the United Republic of Tanzania.[28] Moreover, only 26 States have accepted the jurisdiction of the Court. In its response to the survey, the Government of Kenya noted a lack of political will to implement the decisions of the Court and a lack of adequate funding as the main obstacles.

22. Although it boasts the best-funded regional arrangement in the world, Europe also has a problem with structural imbalances. Within the European system, the Convention makes provision for civil and political rights only, while the European Social Charter covers social and economic rights. The two are not treated equally: while accession to the Convention is a condition of Council of Europe membership, it is not a requirement for the Charter, underlining the lesser status accorded to social and economic rights in the European system.[29] Ironically, the most critical problem appears to be the mounting number of individual complaints. A combination of factors - the positive public reputation of the Court in some countries, its expansive interpretation of the Convention and entrenched human rights problems in other countries - has attracted tens of thousands of new individual applications annually. Such cases often last for years, resulting in a mounting backlog. As of September 2016, the Court had issued more than 10,000 judgments but had more than 74,000 pending cases. Some say the Court is becoming a victim of its own success and now

[26] Survey response by the Government of the United States.

[27] See Frans Viljoen, *International Human Rights Law in Africa*, 2nd ed. (Oxford, Oxford University Press, 2012).

[28] The following 30 member States have ratified the Protocol: Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Comoros, Congo, Côte d'Ivoire, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Malawi, Mali, Mauritania, Mauritius, Mozambique, the Niger, Nigeria, Rwanda, Sahrawi Arab Democratic Republic, Senegal, South Africa, Togo, Tunisia, Uganda and the United Republic of Tanzania.

[29] See Anna Greer and Louis J. Kotzé, eds., *Research Handbook on Human Rights and the Environment* (Cheltenham, Edward Elgar Publishing, 2015).

faces a docket crisis of massive proportions. There also remain substantive questions about how the Court accomplishes its core mandate - protecting the civil and political rights enshrined in the Convention - and whether the procedural framework it uses to achieve that goal needs to be revised in response to changes in the legal and political landscape of human rights protection in Europe.[30] On a positive note, however, the backlog has been decreasing since 2014 owing to institutional reforms.

Procedural challenges

23. Procedural problems are typically the result of institutional design decisions, subsequent modifications, or day-to-day practices that serve to limit the efficacy or scope of a regional arrangement. While the League of Arab States which was founded in 1945, was the first regional mechanism recognized by the United Nations, it was almost 60 years before member States adopted the Arab Charter on Human Rights. There exists a window of opportunity to further enhance the compatibility of the Charter with international human rights standards. The Arab Human Rights Committee can only receive State reports and issue recommendations. It cannot decide on individual or inter-State complaints. The final draft for the statute of the Arab Court of Human Rights has been revised to restrict access to the Court to States parties only. However, member States can, at their discretion, permit civil society organizations to present cases on behalf of individuals.

24. The Inter-American Court has a special unit dedicated to monitoring compliance with its judgments and the average duration of the cases before it was 20 months in 2016, less than the 24 months in 2014. The Inter-American Commission currently has no strong institutionalized form of follow-up, although it is creating one. However, individual complaints often take too long before the Commission, resulting in a backlog of cases. It can take three or more years for the Commission to forward a petition to the relevant State for an initial response.[31] According to the 2016 annual report of the Commission, it received 2,567 petitions in that year alone, adding to a backlog of thousands of pending cases.[32]

25. The 11 members of the African Commission on Human and People's Rights are part-time but fulfil numerous functions, which may limit the capacity of the Commission. Commissioners and judges of the African Court are elected by the African Union to ensure independence.[33] However, some scholars consider the coverage of human rights by the African Charter to be incomplete by international standards. For example, article 6 of the Charter states that "no one may be deprived of his freedom except for reasons and conditions previously laid down by law." This means that as long as there is a pre-existing law, Governments may deprive people of their freedoms.[34] However, it should be noted that these "clawback" provisions are fairly common in legal language and that the African Commission has so far maintained a strict interpretation of them, thereby preventing their abuse.

26. The ASEAN Charter fails to provide an effective enforcement mechanism, as it continues to emphasize sovereignty, territorial integrity and non-interference in domestic affairs. Thus, the Intergovernmental Commission on Human Rights is comprised of government appointees accountable to their Governments, who can remove the appointees at their discretion. It operates by consensus, which gives each State an effective veto over the decisions of the Commission. In fact, the mandate of the Commission does not contain explicit provisions for receiving and investigating complaints of human rights violations. Discussions of complaints take place in closed meetings, so it cannot be confirmed whether and which cases have been discussed. The Commission has yet to take public action in

[30] See Laurence R. Helfer, "Redesigning the European Court of Human Rights: embeddedness as a deep structural principle of the European human rights regime", *European Journal of International Law*, vol. 19, No. 1 (2008).

[31] Survey response by the Government of the United States.

[32] See www.oas.org/en/iachr/docs/annual/2016/TOC.asp.

[33] See www.au.int/en/organs/cj.

[34] See Sandhiya Singh, "The impact of clawback clauses on human and peoples' rights in Africa", *African Security Review*, vol. 18, No. 4 (2009).

response to a complaint. Although NGOs are striving to improve human rights conditions in Asia, that is proving to be difficult because the Commission has largely excluded civil society organizations from participation in its initiatives.[35]

V. Role of the Office of the United Nations High Commissioner for Human Rights in the advancement of regional and subregional human rights arrangements

27. Mandated by Human Rights Council resolutions, OHCHR has consistently organized workshops aimed at enhancing cooperation between the United Nations and regional human rights mechanisms, including information-sharing on best practices and lessons learned and discussions on possible new forms of cooperation. A key success story, for example, is the Addis Ababa road map adopted by the special procedures of the United Nations and the African Commission on Human and People's Rights.[36] International workshops on regional arrangements, preceded by consultations, were held in 2008, 2010, 2012, 2014 and 2016. Furthermore, OHCHR has a dedicated section, the National Institutions, Regional Mechanisms and Civil Society Section, which is responsible for supporting regional mechanisms. Although a key achievement has been the creation of a network of 17 focal points for cooperation between regional mechanisms, which hold annual meetings and coordinate the biannual workshops, this activity is coordinated by a single person in the Section.

28. OHCHR supports the establishment and operation of national and regional human rights organizations through capacity-building, such as training and technical assistance, and facilitating information flows. The technical assistance programme integrates support for national institutions with other forms of United Nations assistance, but more needs to be done for effective capacity-building. In its response to the survey, the Government of Kenya noted that it had faced a challenge with regard to training on various human rights issues. It stated that more support was required for human rights awareness campaigns, especially in regard to the abolition of the death penalty and the training of government officers on a human rights-based approach to programming and planning, in order to build their capacity to provide service delivery in a meaningful way. In its response, the National Council for Human Rights of Egypt also noted that OHCHR could play an important role by conducting training for the staff of the institutions concerned, helping to develop information and documentation systems, and facilitating exchange of experience with relevant institutions, especially those belonging to the international system of human rights protection. OHCHR could also help to establish regional offices and human rights centres that would provide an additional structure promoting the concept of regional protection of human rights.

29. OHCHR also assists with the diffusion of international human rights standards to regional arrangements. In the case of the League of Arab States, OHCHR provided assistance in revising the 1994 version of the Arab Charter on Human Rights to improve its compliance with international human rights standards.[37] OHCHR has encouraged the security architecture of the African Union to adopt a human rights approach and supported the 2017 African Union high-level dialogue on human rights, as well as planning for the 10-year action and implementation plan for the promotion and protection of human rights. In the Americas, OHCHR supported the Inter-American Commission during its 2013 reform process and helped to raise public awareness during its budgetary crisis in 2016. In 2017 in the Middle East, valuable training on United Nations human rights mechanisms was provided to the OIC Independent Permanent Human Rights Commission. Of course, there are still challenges. It has been pointed out that OHCHR may consider facilitating staff exchange and peer advice for regional mechanisms, provide regular training and

[35] See https://humanrightsinasean.info/asean-intergovernmental-comission-human-rights/about.html.

[36] See www.ohchr.org/Documents/HRBodies/SP/SP_UNHRC_ACHPRRoad%20Map.pdf.

[37] Mervat Rishmawi, *The League of Arab States Human Rights Standards and Mechanisms: Towards Further Civil Society Management: a Manual for Practitioners* (2015).

publish its performance assessment of regional mechanisms to identify areas where it can provide further support.[38]

30. Working towards this end, OHCHR has set up 12 regional offices and is currently carrying out plans to establish more in Asia. The regional offices have facilitated various forms of planning and cooperation between international and regional or subregional mechanisms. Key examples of those strategic activities include the annual meetings held by the secretariats of OHCHR and the Council of Europe since 2007; the joint declarations on the reinforcement of cooperation with the Council of Europe (in 2013) and the OSCE Office for Democratic Institutions and Human Rights (in 2014); and the participation of judges from the European Court of Human Rights in the Human Rights Committee session in July 2016 and of judges from the European Court and the Inter-American Court in the session of the Committee against Torture in December 2017. OHCHR, which signed a joint declaration with the Inter-American Court in 2014, now participates in planning activities with both the Inter-American Commission and the Court, which in 2016 included meetings, training and seminars in Washington, D.C., Guatemala and Panama City. Another accomplishment was a workshop on regional and subregional human rights courts held at Strasbourg, France, in 2015, which allowed the sharing of jurisprudence and best practices by judges and experts from Africa, the Americas and Europe.

31. OHCHR plays a pivotal role in bridging the gap between regional human rights mechanisms and the broader international community. For example, joint public statements and technical cooperation with regional and subregional organizations have been an important tool in denouncing violations and in assisting States to comply with international legal standards.

VI. Contribution of other actors to regional and subregional human rights arrangements

National human rights institutions

32. National human rights institutions, which vary in size and capacity from country to country, support regional mechanisms directly by creating connections for national actors at the international level. For instance, in its response to the survey, the National Council for Human Rights of Egypt explained that the effectiveness of the African human rights mechanism could be improved by strengthening cooperation with national human rights institutions, increasing awareness of the competences and goals of both the African Commission on Human and People's Rights and the African Court on Human and People's Rights, exchanging experiences with other regional mechanisms and learning from success stories that have made these institutions more effective. It also noted that the African Union Commission and the Network of African National Human Rights Institutions signed a memorandum of understanding in January 2016 and have developed guidelines on the role of national human rights institutions in monitoring the implementation of the findings of the African Commission and the judgments of the African Court. European national human rights institutions have created the European Network of National Human Rights Institutions to coordinate their activities across a range of human rights issues. Finally, there is the Global Alliance of National Human Rights Institutions, which was established in 1993.

33. Owing to their role of ensuring fluid connections with human rights actors, national human rights institutions have the potential to foster active dialogue between United Nations and regional human rights regimes worldwide. Such institutions network both with each other and with OHCHR in Geneva on a regular basis through annual meetings and in regional meetings. Given the now recognized international status of national human rights institutions, their potential to advance human rights is manifest.[39] The Iberoamerican

[38] Survey response by the European Union Agency for Fundamental Rights.

[39] See John von Doussa, "The potential role of national human rights institutions in the Pacific", paper given at the Australasian Law Reform Agencies Conference (September 2008).

Federation of Ombudsman has played this role in the Americas, linking national, regional and United Nations systems. Another example is the Asia Pacific Forum of National Human Rights Institutions, one of the most effective forms of collaboration in the region. Established in 1996, the organization aims to support the establishment and efficient operation of national human rights institutions in Asia and currently has 24 members. The key roles of the Forum include building stronger national human rights institutions; providing advice and expertise; collaborating and sharing knowledge; promoting gender equality; contributing at the national, regional, and international level; and supporting effective leadership and governance. It thus opens up new avenues for strengthening human rights protections for the inhabitants of the region.

Civil society

34. NGOs push reluctant Governments to step up their human rights protection efforts by pressuring them to ratify international human rights treaties. After ratification, they also help to evaluate compliance. NGO monitoring and reporting serves are invaluable sources of information for the enforcement authorities of regional regimes. In one example, the International Commission of Jurists complained to the European Committee of Social Rights that child labour incompatible with the European Social Charter was common in Portugal. That led to Portugal amending its Constitution to prohibit the employment of schoolchildren and increasing the minimum age for employment, which caused a dramatic drop in violations.[40]

35. The productive engagement of NGOs in other regional mechanisms is also visible. Although many NGOs are active, only a few examples can be cited. The Center for Justice and International Law has participated in over 300 cases before both the Inter-American Commission and Court on behalf of more than 13,000 victims. Its success has translated into, among other things, the payment of monetary reparations (more than $66 million to almost 2,500 victims); the reopening of investigations and cases that had earlier been met with impunity; public apologies by high-ranking government officials; and changes in the laws and practices of States.[41] In Africa, the rules of procedure of the African Commission allow NGOs to sit in on public sessions of the Commission and of its subsidiary bodies. There are 515 NGOs with observer status with the Commission and the engagement of civil society has been further enhanced by the NGO forum, an advocacy platform coordinated by the African Centre for Democracy and Human Rights Studies, which convenes in advance of sessions of the Commission.[42]

36. Although Asia does not yet have a regional human rights arrangement, civil society is working towards this goal. In 1993, building on earlier groundwork, more than 110 NGOs from 26 countries across Asia adopted the Bangkok NGO Declaration of Human Rights, a hopeful step towards cooperative transborder human rights activism. Continued efforts to build a comprehensive system of human rights norms led to the issuance of the Asian Human Rights Charter in 1998, an important demonstration of the existence of a normative consensus among representatives of Asian civil society. Although many countries in the region do not have strong domestic civil societies, Asian NGOs have compensated by creating transnational networks focusing on networking, coalition-building, capacity-building and advocacy across borders, while also putting effort into monitoring, documentation, campaigning, and training. For instance, the Asian Forum for Human Rights and Development (Forum-Asia), one of the most prominent transnational NGOs based in South-East Asia, has been implementing human rights advocacy programmes in ASEAN countries to ensure the effectiveness of ASEAN human rights institutions and is also making strenuous efforts to raise public awareness of and bring government attention to regional human rights cooperation in Asia.

37. As of now, however, many NGOs, especially those in Africa, Asia and the Middle East, suffer from a lack of legal protection and the resources to successfully carry out their

[40] *International Commission of Jurists v. Portugal*, complaint No. 1/1998.

[41] See www.cejil.org/sites/default/files/legacy_files/Report20_ENpdf.pdf.

[42] For more information, see www.acdhrs.org/ngo-forum/.

activities.[43] According to the online monitor run by CIVICUS, civil society space is narrowed, obstructed, repressed and even closed in most countries around the world, with only a few northern European countries and New Zealand classified as truly open.[44] Shrinking civil society space suggests that NGO efforts to create subregional and regional mechanisms from the bottom up cannot succeed unless they receive sustained support and coordination by international actors.

VII. Implications for the protection of human rights through regional and subregional human rights arrangements

38. The foregoing analysis of the achievements and challenges of regional human rights arrangements suggest that the most important factors determining the success or failure of regional human rights mechanisms include the following factors:

(a) Commitment:

(i) The intent and will of individual States to conform to regional and international standards;

(ii) Signing and ratification by most, if not all, of the States in the region;

(iii) Changes in laws or legal practices by individual States in the region;

(iv) Securing adequate human and financial resources for the regional and subregional human rights arrangements;

(b) Procedures:

(i) Ensuring the institutional independence of judges from national interests and influences;

(ii) Resolving backlogs and delays in human rights mechanisms (especially courts) and preventing future backlogs;

(iii) Establishing enforcement mechanisms for decisions by regional human rights mechanisms;

(iv) Monitoring mechanism to follow up on decisions and increase transparency;

(v) Maintaining the integrity and neutrality of regional mechanisms;

(c) Collaboration:

(i) Alliances between global and local human rights organizations to uphold international standards and hold perpetrators of violations accountable;

(ii) Role of national human rights institutions in coordinating and strengthening the implementation of decisions and increasing the likelihood of compliance;

(iii) Protection of and participation by members of civil society in submitting petitions, representing victims, pressuring responsible actors and following up on court decisions.

39. Ideally, the efficient functioning of a regional mechanism requires all three factors to operate in unison. A lack of member State commitment undercuts the vitality of the entire structure, while a mismatch between commitment and collaboration will create adversarial relationships that complicate the procedural level. Although the potential for procedural flaws and inefficiencies exists in all regional arrangements, a synergistic relationship between member State commitment and collaboration with international and civil society

[43] Council on Foreign Relations, International Institutions and Global Governance Program, "The global human rights regime" (May 2012), Available from www.cfr.org/human-rights/global-human-rights-regime/p27450.

[44] See https://monitor.civicus.org/.

actors helps to identify and manage such problems and, in the best cases, literally ties all three levels together into a closely functioning and self-reinforcing system.

40. Conceptualizing successful regional mechanisms as integrated systems of commitment, procedure and collaboration has important implications for ongoing efforts to create new regional arrangements. First, it highlights the importance of the commitment of member States but emphasizes that this factor does not exist in isolation. Collaboration with domestic and international actors is required, even in the presence of strong member State commitment, just as domestic and international actors cannot succeed without member State commitment. This suggests that thinking sequentially is problematic when creating new arrangements. Rather, a successful regional arrangement requires the parallel development of self-supporting levels of collaboration, procedure and commitment. Modest but balanced arrangements that are allowed to evolve organically may be more sustainable than ambitious projects that seek to do too much too quickly.

41. Guaranteeing the commitment of member States to a regional human rights arrangement may be hindered because of different types of State governance. In contrast to norms prevailing in other regions, many Asian countries regard human rights issues as a domestic issue. Since non-interference in domestic affairs is one of the principles explicitly underlying the ASEAN founding documents, efforts to internationalize human rights protection within the ASEAN framework are expected to encounter procedural problems Furthermore, Asian countries tend to prioritize government-centred policy initiatives for creating economic development and accept the relegation of individual rights for the collective good.[45] Those differences, combined with the growing economic and political importance of Asia in the world, suggest that a simple transference of European models may not be a realistic expectation.

42. Strong commitment by a powerful country or small group of countries could be one way to generate momentum for a regional arrangement in Asia. As we have seen, a similar role was played by the United States in creating and financing the Inter-American human rights mechanism. For many international regimes, the presence of a leading nation is very important. However, many Asian powers do not appear to be willing to take on this role.

43. Thus, there appear to be three possible routes to creating an Asian regional human rights arrangement. The first is the narrow approach. That would consist of the creation of a small subregional human rights arrangement that is geographically limited but marked by a high degree of commitment, procedures closely modelled on best practices and deep collaboration with international actors and civil society. For example, an Asian human rights regime could be centred on a country with a strong human rights record and then expand to neighbouring countries. That approach would have the advantage of maximizing the protections for the inhabitants of member States in accordance with international standards but could experience growth difficulties if its convention and enforcement mechanisms were perceived as too intrusive.

44. The second route is the wide approach. That would consist of the negotiation of a broad and inclusive human rights arrangement that encompasses the entire region. Owing to widely divergent cultural values, types of governance and member State preferences, a successful agreement would necessarily reflect the lowest common denominator. In all likelihood, such an organization would be underfunded, procedurally handicapped and would limit the opportunities for civil society engagement. Nevertheless, its existence would be highly symbolic, provide at least a modicum of protection to the largest number of people and could help to encourage member States to show more commitment in the future.

45. The third route to a regional arrangement in Asia would consist of a networked approach, which closely resembles the method adopted in Africa. That would consist of the development of multiple and overlapping subregional mechanisms among like-minded countries. Those mechanisms would not have the same procedures because compromises

[45] See Amartya Sen, *Human Rights and Asian Values* (New York, Carnegie Council on Ethics and International Affairs, 1997).

would be necessary when establishing each body, realistically taking into account which provisions member States would be comfortable ratifying and implementing. Attention should be focused on the extent to which compromises could be made. This approach could lead to the proliferation of organizations based on subregions, such as Central, Eastern, Northern, South-eastern, Southern and Western Asia. Those organizations would cooperate with each other but would reflect the distinctive approach to human rights protection of each subregion. In parallel, further international agreements could be created at the regional level focusing on addressing common issues, such as child poverty or the rights of the elderly, or technical issues such as consumer privacy rights. In the long run, of course, efforts would be needed to integrate these diverse subregional rights systems and single issue regimes into a coherent whole. Criss-crossing the region with a network of subregional arrangements would allow countries to move at their own pace. In doing so, they would be encouraged by international civil society and assisted by the United Nations system.

46. It is clear from the case of Europe and other successful regional arrangements in Africa and the Americas that strong regional cooperation and coordination greatly contribute to the consolidation of universal human rights. The networked approach is not only effective in creating new regional mechanisms, it will also revitalize existing ones. Joint networks are essential for ensuring that overlapping global, regional, subregional and national human rights actors maximize their potential and avoid jurisdictional conflict. For stronger and more effective regional mechanisms, all actors, including Governments and civil societies, will need to play important roles in promoting multilevel cooperation, which will include national assemblies, courts, national human rights institutions, private sector representatives and scholars from various fields. Specifically, there needs to be awareness that sustainable procedures are the result of a careful balance between commitment and collaboration. Finding that balance requires careful research, honest negotiations and a willingness to listen and learn by local and international actors alike. Put simply, human rights can be implemented to the fullest extent only when Governments, citizens and international civil society are willing to engage in the process.

VIII. Conclusions and recommendations

Conclusions

47. **Regional human rights mechanisms have made important achievements in protecting human rights around the world. The European regime has made great strides in changing laws and practices in its member States, including enhancing the protections for vulnerable populations such as same-sex couples and children. The Inter-American Commission on Human Rights has helped to protect human rights defenders and the rights of indigenous peoples, and has issued reports on member States. The African Commission on Human and People's Rights and the Arab Human Rights Committee publish reports which are used by civil society actors to further advocate for the protection and promotion of human rights.**

48. **Despite these successes, regional human rights mechanisms are still struggling to overcome serious limitations. Some of them do not enjoy the membership of all States within their respective regions. In the case of the Inter-American human rights mechanism, the United States, Canada and most Caribbean States have not ratified the relevant convention. Likewise, some African and Arab States have not ratified their respective regional human rights conventions either. In Asia, there is no region-wide human rights arrangement. Regional arrangements also have many operational limitations, including restrictions on the independence of judges, an inability to enforce their decisions, or serious backlogs of cases. A lack of political will by relevant States and insufficient funding are also serious obstacles, even in Europe.**

49. **The United Nations is essential to forging a complementary relationship between regional and universal arrangements, because it is in a position to work with all regional mechanisms and promote further exchanges of information and good practices between them. South-South cooperation is vital in strengthening existing**

regional mechanisms and developing new ones. The United Nations can also strengthen the international legal order by actively promoting the exchange of jurisprudence between regional mechanisms and active dialogue regarding common issues and best practices. That is important for resolving potential tensions between the universal approach to human rights and regional approaches. More specifically, the partnership between OHCHR and human rights mechanisms (particularly through its regional and country offices and through its special procedures and treaty bodies) has proven crucial in the promotion and protection of human rights at the local level. OHCHR helps regional mechanisms and States with drafting human rights instruments, following up on the universal periodic review, supporting the work of national human rights institutions, providing platforms and training, and by acting as a bridge between global and regional mechanisms.

50. National human rights institutions and civil societies have also contributed to regional and subregional human rights arrangements. They play a special role as an institutional bridge between individuals and States and between States and international society. Meanwhile, members of civil society have made significant contributions to ensuring the long-term effectiveness of regional human rights arrangements. NGOs, although facing resource constraints and shrinking civil society space, successfully spread human rights values, lobby Governments, publish independent reports, create blueprints for further human rights progress, draft human rights conventions and even help to create new international bodies. This bottom-up pressure can help regional arrangements to work more smoothly in cases of strong member State commitment and can help generate commitment where it is initially lacking.

51. At their best, regional human rights mechanisms can change State laws and practices, promote the rights of the most vulnerable and serve as a reference model for member States and neighbouring regions. To achieve optimal results from such arrangements, there is a need to ensure that most, if not all, States within the region ratify the relevant conventions. There is also a need to ensure the independence of judges and the existence of an enforcement mechanism for their decisions. The implementation of a monitoring mechanism to follow up on decisions is also necessary, as is allowing members of civil society to participate in the process. More broadly, collaboration with OHCHR, State Governments, local governments, national human rights institutions, corporations and NGOs at all stages of the development and operation of a mechanism must be ensured and strengthened. Lastly, securing human and financial resources is vital for ensuring effective operation.

52. The implications of the present study for the prospects of a new regional mechanism in Asia is that all actors, including Governments and civil societies, must play strong roles in promoting a mechanism of multilevel cooperation. Although there are several possible routes to creating a regional arrangement in Asia and improving existing mechanisms elsewhere, it is certain that this cannot be accomplished by simply mimicking mechanisms from other regions. It requires strong State leadership, supplemented by all relevant stakeholders such as national assemblies and legislatures, courts, national human rights institutions, law enforcement agencies and even corporations.

Recommendations

53. Member States of regional human rights arrangements need to make greater efforts to guarantee adequate funding for the latter. Without funds, even the best designed procedures will struggle to protect human rights adequately. The sustainability of regional arrangements requires strong commitment by member States and the active participation and oversight of other human rights organizations, both domestic and international. That said, worsening economic conditions around the world mean that regional arrangements may face increased competition for access to State budgets. There is a need for innovative thinking and experimentation by human rights practitioners and the international community to find ways to enable regional arrangements to do more with less. Leveraging new technologies for greater

efficiencies or streamlining traditional methods of human rights litigation are just some of the ways that resource constraints could be managed in the years ahead. Another promising possibility is using private-public partnerships to forge new types of funding arrangements between regional human rights mechanisms and Western donors, especially large charitable foundations.

54. Asia may consider establishing a human rights court or a similar human rights institution with a relevant mandate, building on lessons learned from other regions. One way to create the necessary political consensus for this court would be an innovative adaptation of the pre-existing universal periodic review process. Since all Asian countries participate in that process, it could be leveraged to facilitate discussions on enhancing regional human rights cooperation. Ideally, a regional subforum based on the universal periodic review, especially if it was open to the expanded participation of civil society, scholars and other relevant stakeholders, could focus on cooperative solutions to common problems, carry out peer reviews and encourage States to share their experiences on how to implement its recommendations. It is noteworthy that regional mechanisms, such as the Council of Europe, the OSCE Office for Democratic Institutions and Human Rights and the European Union Agency for Fundamental Rights, are now taking part in the universal periodic review process in Europe, which helps both OHCHR and the States involved. In Asia, this process could be reversed. Starting modestly as an institution for providing technical assistance to States engaged in the universal periodic review process, such a subforum would be well placed to evolve into a more comprehensive regional mechanism.

55. More support needs to be given to the actors that play key roles in establishing regional human rights cooperation at the national and local level, particularly parliaments and legislatures, law enforcement agencies, courts and municipal or local governments. A regional human rights mechanism is only as strong as the local actors responsible for implementing and guaranteeing its protections. The facilitation of horizontal cooperation between those actors will permit the dissemination of best practices and help to create State preferences for regional human rights cooperation from the ground up. As such, in the present report the Advisory Committee reiterates its earlier recommendation that local governments participate more in United Nations human rights mechanisms (A/HRC/30/49). The support provided by OHCHR for human rights education at the level of local communities in Georgia in 2015 is noteworthy in that regard.[46]

56. Regional human rights arrangements can further improve their effectiveness by improving their communications and information dissemination. For instance, the Government of Montenegro recommends the appointment of focal points for the European Court and the Council of Europe who would regularly disseminate information about special procedures and treaty bodies.[47] That could involve cooperation with human rights institutions inside their jurisdictions, such as national human rights institutions, civil society groups and individual scholars, as well as coordination and information-sharing with other regional human rights arrangements. Moreover, regional mechanisms must be more effective at explaining their importance to the public because popular support is essential for maintaining a high level of commitment.

57. Human rights institutions, including regional human rights regimes, should cooperate by tackling region-wide thematic issues, including but not limited to, women's rights, children's rights, the rights of migrants and the rights of persons with disabilities. Efforts should be made to develop the treaties on specific subjects and systems into effective tools for the promotion of human rights. An excellent case in point is the Sustainable Development Goals, which officially aim to "realize the human rights of all." Regional cooperation in the practical implementation of the Goals not only has tangible developmental benefits for the countries involved but can

[46] Survey response by the Government of Georgia.

[47] Survey response by the Government of Montenegro.

also be used to create the scaffolding of future regional human rights instruments, particularly those protecting economic and social rights. Economic, social and cultural rights may be the best place to expand regional mechanisms.

58. **OHCHR needs to play a key role in facilitating the creation of a regional or subregional human rights mechanism in Asia and in improving the operation of existing arrangements in other regions. It could accomplish this by continuing to act as an information clearing house that provides detailed, technical advice on best practices and by creating forums where negotiations and exchanges of ideas can occur. That could include offering regular newsletters that bring together updated information from regional human rights mechanisms, including on best practices, lessons learned, decisions, recommendations, reports, calendars and planned visits (A/HRC/28/31). OHCHR could also help to establish regional offices and human rights centres that provide additional institutional support for promoting the regional protection of human rights.[48] More substantively, thematic issues of common interest, such as the fight against racial and ethnic discrimination, the rights of persons with disabilities, gender equality, violence against women, and the protection of vulnerable groups are areas where the OHCHR can contribute.[49]**

59. **However, in the present report the Advisory Committee acknowledges that OHCHR cannot do more without adequate resources. Strengthening the relationship between the United Nations system and regional mechanisms through research, capacity-building and organizing workshops will require the allocation of more personnel and financial resources to the task, even if this requirement can be offset somewhat by the innovative use of technology. It is recommended that a special unit within the National Institutions, Regional Mechanisms and Civil Society Section of OHCHR be created to coordinate all activities involving regional mechanisms. The unit will require more staff than the one person currently allocated to regional mechanisms, preferably one P-4 and one P-3 or P-2. The section will also require additional funding to take on a broader scope of activities.**

60. **In addition to supporting a network of focal points, the special unit could conduct an exhaustive review of OHCHR activities regarding regional human rights mechanisms to date and develop a comprehensive strategy detailing how the regional, subregional and international human rights systems could be integrated into an effective whole. That would include elaborating criteria and methodological tools for evaluating and comparing regional mechanisms, determining their needs, compiling information on best practices and devising capacity-building benchmarks. Ultimately, the unit will seek to support the establishment of regional and subregional mechanisms and strengthen the effectiveness of existing mechanisms, which will require horizontal and vertical information-sharing and enabling their greater participation in United Nations bodies.**

---

[48] Survey response by the National Council of Human Rights of Egypt.

[49] Survey response by the Government of Montenegro.

United Nations A/HRC/39/59

General Assembly

Distr.: General
9 July 2018

Original: English

Human Rights Council
Thirty-ninth session
10–28 September 2018
Agenda items 3 and 5
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Human rights bodies and mechanisms

Report of the Human Rights Council Advisory Committee on the activities of vulture funds and their impact on human rights

Note by the Secretariat

1. In its resolution 34/3, the Human Rights Council took note with appreciation of the progress report of the Advisory Committee on the activities of vulture funds and their impact on human rights,[1] and requested the Committee to present a final report thereon to the Council at its thirty-ninth session for its consideration.

2. At its twentieth session, in February 2018, the Advisory Committee decided to recommend that the Human Rights Council extend the time scheduled in order to allow for better-informed work, and that it request the Advisory Committee to submit its final report to the Council at its forty-first session.

3. The above-mentioned report of the Advisory Committee will accordingly be submitted to the Human Rights Council at its forty-first session.

[1] A/HRC/33/54.

GE.18-11280(E)
1811280

Please recycle

United Nations A/HRC/39/60

General Assembly

Distr.: General
9 July 2018

Original: English

Human Rights Council
Thirty-ninth session
10–28 September 2018
Agenda items 3 and 5
Promotion and protection of all human rights, civil, political, economic, social and culture rights, including the right to development

Human rights bodies and mechanisms

Negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms

Note by the Secretariat

1. In its resolution 34/8, the Human Rights Council requested the Advisory Committee to conduct a study and prepare a report on the negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms, with a particular focus on economic, social and cultural rights, including as a result of diverting foreign direct investment, reducing capital inflows, destroying infrastructure, limiting foreign trade, disturbing financial markets, negatively affecting certain economic sectors and impeding economic growth, and to recommend actions to be taken by Governments, United Nations human rights mechanisms, regional and international organizations and civil society organizations in this regard, and to present the report to the Council at its thirty-ninth session, to be discussed during the interactive dialogue.

2. At its twentieth session, held in February 2018, the Advisory Committee decided to recommend that the Human Rights Council extend the time scheduled in order to allow for better informed work, and that it request the Advisory Committee to submit the final study to the Council at its forty-second session.

3. Accordingly, the above-mentioned report of the Advisory Committee will be submitted to the Council at its forty-second session.

GE.18-11281(E)
1811281

Please recycle

United Nations A/HRC/39/61

General Assembly

Distr.: General
9 July 2018

Original: English

Human Rights Council
Thirty-ninth session
10–28 September 2018
Agenda items 3 and 5
Promotion and protection of all human rights, civil, political, economic, social and culture rights, including the right to development

Human rights bodies and mechanisms

Research-based study by the Human Rights Council Advisory Committee on the possibility of utilizing non-repatriated illicit funds, including through monetization and/or the establishment of investment funds, while completing the necessary legal procedures, and in accordance with national priorities, with a view to supporting the achievement of the Goals of the 2030 Agenda for Sustainable Development, contributing to the enhancement of the promotion of human rights and in accordance with obligations under international human rights laws

Note by the Secretariat

1. In its resolution 34/11, the Human Rights Council requested the Human Rights Council Advisory Committee to conduct a study, in continuation of the study requested by the Council in its resolution 31/22, on the possibility of utilizing non-repatriated illicit funds, including through monetization and/or the establishment of investment funds, while completing the necessary legal procedures, and in accordance with national priorities, with a view to supporting the achievement of the Goals of the 2030 Agenda for Sustainable Development, contributing to the enhancement of the promotion of human rights and in accordance with obligations under international human rights law, and to submit the requested study to the Council at its thirty-ninth session.

2. At its twentieth session, in February 2018, the Advisory Committee decided to recommend that the Council extend the time scheduled to allow for better informed work, and that it request the Advisory Committee to submit the study to the Council at its forty-second session.

3. The above-mentioned study of the Advisory Committee will accordingly be submitted to the Human Rights Council at its forty-second session.

GE.18-11282(E)
1811282

Please recycle